93-747

Supreme Court, U.S.
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OFFICE OF THE CLERK

NO._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

BRUCE BALDWIN MOHS,

v. PETITIONER

CENTURY 21 REAL ESTATE CORP., A wholly-owned subsidiary of METROPOLITAN LIFE INSURANCE COMPANY & TRANS WORLD CORP.

RESPONDENT

PETITION FOR A WRIT OF CERTIORARY TO THE

UNITED STATES COURT OF APPEALS, 7th CIR.

PETITION FOR A WRIT OF CERTIORARI

BRUCE BALDWIN MOHS
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Madison, Wisconsin, U.S.A.
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(608) 233-2660 (FAX)

PRO SE of RECORD

QUESTIONS PRESENTED FOR REVIEW

1. Does a prior registrant of a trade name registered with a State Secretary of States office have superior rights over a latter-day registrant that registers in the same Secretary of States office more than three and a half years later with an identical name also in the real estate related field? Prior date registrant (Petitioner) name was more than a half year ahead of Respondent's Federal registration and in continuous use.

2. Will the granting of superior rights in trade name registration to latter-day registrant set a dangerous precedent to the World Intellectual Property Organization that monitors registrations of signatory nations as a United Nations affilliate of which U.S. is a signatory nation?

QUESTIONS PRESENTED FOR REVIEW CONTINUED

3. In view of the fact that the Hon, R. Pekowsky, Judge in Branch 5 of Dane Co. WI banned Petitioners book titled "The Amazing Mr. Mohs -- Titled as the Movie of the Same Name", ISBN #0-931279-00-3, Library of Congress No. 8490657 in 1985 with a Contempt of Court motion as Petitioner Mohs included a chapter about the trade name in question as part of a total autobiography, will the Court reverse the Contempt of Court motion in observance of Petitioner's First Amendment to U. S. Constitution rights? The book also has Canadian copyright no. 337649 and Canada is also a World Intellectual Property Organization signatory nation. Petitioner is a United States Citizen.

LIST OF PARTIES

BRUCE BALDWIN MOHS, Petitioner

Petitioner is a sole-proprietor in respect to his interest in Century 21 of WI since 1980 and from Dec. 20, 1972 to 1980 a co-partner with one John Livesey.

Address: 2355 University Avenue
Madison, Wisconsin 53705
Telephone: (608) 233-9717 (office)
(608) 845-3600 (home)

METROPOLITAN LIFE INSURANCE COMPANY

A mutual life insurance company owned by its policyholders world-wide with the power to control the board of directors and all officer decisions since the late 1800's. Prior to that an industrial insurance carrier and during the Civil War known as the Union Life & Limb Insurance Company, a sole proprietorship. The parent company of

Century 21 (of CA) since purchase

from Trans World Corp. in 1985,

Address: One Madison Avenue
New York City, N. Y.
Telephone: (212) 578-2211

As required by rule 29.1 of the U.S. Supreme Court subsidiaries of Metropolitan Life Insurance Co. are listed below:

MetLife (UK) Ltd.
Metropolitan House, Drake Lane
Potters Bar, Hertfordshire, Eng.
United Kingdom

GFM International Investors
Orion House, 5 Upper, St. Martin Lane, London, Wc2H 9EA, England

Morgard Investments Ltd.
Toronto, Ontario, Canada
Postal Code: ON M4W 3K9

Metropolitan Trust Co. of Canada
6 Crescent Rd.
Toronto, Ontario, Canada

ACFC Corporate Finance Limited
Potters Bar, Herts. Eng. EN6 1AJ
United Kingdom

Santander Met. SA Madrid
Paseo De La Castellana 95
Madrid SP 28046 Spain

Metropolitan Insurance & Annuity
Taiwan Branch 85 Jen Ai Road Se.4
Taipei, 10649, Taiwan, Free China

LIST OF PARTIES CONTINUED

Seguros Gensis, SA
Paseo De La Castellana 95
Madrid, SP 28046, Spain
Founded 1988

ALL OF FOLLOWING USE THE 1 Madison Ave.

New York City address of METROPOLITAN

LIFE INSURANCE COMPANY:

State Street Research & Management Co.

Metropolitan General Ins. Co. (1981)

Metropolitan Property & Casualty Co.('72)

Metropolitan Casualty Ins. Co. (1982)

J.C. Penney Casualty Insurance Co. (1989
in 21 states only)

Crum & Forster Personal Insurance Co.
(in 19 states only, 1990)

Metropolitan Reinsurance Co. ("MetRe" '76)

Metropolitan Group Property & Casualty Co.
(founded 1992)

Metropolitan Tower Life Ins. Co. ("MIAC"
also in Taipei, Free China)(1982)

Corporate Health Strategies Inc. (1983)

MetLife Capital Corp. (1983, U.S. only)

LIST OF PARTIES CONTINUED

MetLife General Insurance Agency Inc.('83)

Charter Security Life Ins. Co's. (1985)

MetLife Security Insurance Co. of Louisiana)1985)

Century 21 Real Estate Corporation(1985)

MetLife Holdings Ltd. (1985)

Farmer's National Company of Omaha (1986)

United Mutual Life Insurance (1992)

Banco Santander de Mexico (1992)

Kolon-Met Life Insurance Co, a joint venture percent owned by Metropolitan Life unknown, unreported.

Ms. Bldg. 53-1 Myung-Dong 1 Ga
Jung-Ku, Seoul, Korea

As required by Rule 29.1 of the U.S. Supreme Court subsidiaries of TW Holdings are listed below:

Parent firm: TW Holdings
203 East Main Street
Spartanburg, South Carolina
29319-0001
Telephone: (803) 597-8000
Paul E. Tierney, Chairman Brd.
Jerome Richardson, Pres. CEO
Robert L. Wynn, VP & Gen. Council

TW Holdings subsidiaries below;

TW Services Inc.
203 E. Main St.
Spartanburg, SC 20319
Tel.: (803-597-8000

Division of above subsidiary:

Canteen Company

Group of above:

Canteen Food & Vending Group

Recreation Services Group

Divisions of above:

TW Recreational Services

Volume Services

Denny's Inc.

El Polo Loco

(The Crazy Chicken in English)

Spartan Food Systems

Subsidiary:

Quincy Family Steak House

Denny's of Canada
125-10551 Shellbridge Way
Richmond, British Columbia, CAN.

All divisions, groups, and subsidiaries use Spartanburg, SC address except Canada.

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IN THE SUPREME COURT IN THE UNITED STATES

OCTOBER TERM, 1993

BRUCE BALDWIN MOHS,

v.

CENTURY 21 REAL ESTATE CORP., A wholly-owned subsidiary of METROPOLITAN LIFE INSURANCE COMPANY & TRANS WORLD CORP.

PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS, SEVENTH CIRCUIT

The Petitioner respectfully prays that a writ of certiorari issue to review the judgement and opinion of the U. S. Court of Appeals, Seventh Circuit, of Chicago, Illinois, entered in the above entitled proceeding April 30, 1993. The aforementioned appellate court in its case no. 92-1957 reviewed case no. 91-C-0026-C of the Western District Wisconsin District Court.

OPINIONS BELOW

NOTE; The opinions below are in chronological order in this 17+ year long case. Dane County WI Circuit Court Branch 5, the Honorable Robert Pekowsky presiding. Case No. 156-411 jury trial Final Judgement 4th day of May, 1984 then Defendant Mohs was ordered not to use Century 21 name and to pay $124,501 plus costs and disbursements.

Because Mohs included a chapter in his autobiography published in Dec. 1984 about the Century 21 trial including the suicide of his attorney who obtained the name registration Century 21 for him in March of 1973 he was banned in a Contempt of Court motion as an author, the autobiography being his third book in his body of work in May 1985.

An appeal of the Judge Pekowsky decisions was filed May 1, 1986 in the Wisconsin District IV Court of Appeals as No. 84-1291 stating on page 2 of the decision "Because the resolution of the issues contained in the motion for a partial summary judgment were crucial to the fair determination of the issues remaining for trial we reverse the judgment entered after trial, vacate the damage awards and remand for new trial."

Century 21 of CA appealed to the WI Supreme Court and said in a July 28, 1986 decision "IT IS ORDERED the petition for review is denied, with $50 costs to defendant-appellant and cross-respondent Bruce B. Mohs." To Bruce Mohs knowledge the $50 has never been paid.

A new jury trial took place in Sept. of 1987 in the Hon. Susan Steingass Branch

8 Dane County WI Circuit Court with a decision finally reached Feb. 1, 1988 enjoining Bruce Mohs from using the Century 21 name for real estate services and to pay $4,000 in damages and $15,000 in punitive damages, both of which were paid from Bruce Mohs bankruptcy proceedings caused by the high costs of litigation. Bankruptcy No. 88-001717 (both 11 & 7 chapters) in Judge Martin's Western District Wisconsin Bankruptcy Court.

After the U. S. Supreme Courts decision in 1989 regarding zone of natural expansion theory in franchise operations and the theorems of tortious interference with contract and predation by lawsuit were tested in the courts it became practical for Bruce Mohs to bring suit against Century 21 of CA, which he did in Western District Wisconsin Federal District Court, Hon. Barbara Crabb presiding.

presiding in case no. 91-C-0026-C. Her decision on April 11, 1991 after 7th Constitutional Amendment denial of a jury invoked "collateral estoppel against plaintiff(Bruce Mohs)" and claimed she could not decide on issues brought in state court. The fact Trans World Corporation, for a time owner of the Century 21 of CA franchise operation, did not comply with SEC regulations in its prospectus shown to purchaser Metropolitan Life by not including the lawsuit over the name. She claimed Mohs was not injured by omission. This issue is in the hands of Duane Ware of the Chicago Regional Office of the SEC.

Next came an appeal of the Crabb decision in the United States Court of Appeals in Chicago, Seventh Circuit. That decision rendered by judges: The Hon. Walter Cummings, Richard Cudahy &

Daniel Manion simply affirmed the Western District WI decision of Hon. Barbara Crabb that the case was "interesting" in its "recitation of events" but is woefully "inadequate" presumably in case law. The USCA leaves Mohs a banned author and the equivalent of a Soloman Rushdie in America's publishing world. First Amendment rights are precious to Bruce Mohs & not to be trifled with in his opinion. A similar decision in the life of a Judge would prevent him or her from stating an opinion on certain subject matters.

Now in the Supreme Court, if a hear- is approved it is hoped that this court will restore First Amendment rights, unban a book that was selling well when banned, restore Bruce Mohs wealth that was $2.2 million at one time and due to 17 continuous years of litigation that should have been deemed frivilous has led

him to bankruptcy, loss of two homes and a Federally licensed seaplane base, loss of higher education for his children, loss of an antique car collection necessary to sustain a liq our license at his restaurant under a special bill issued by the WI legislature allowing a license for the saving of artifacts outside quota system. Thus his business had to close, the Federal government denied a commercial seaplane pilot and airplane for its Mississippi checking of dredged in islands, and the loss of more than 20 years of his life from age 40 to 60 tied up in litigation.

The World Intellectual Property Organization, 34 chemin des Colombettes, Geneva, Switzerland has sent two letters regard to name matters and recommends in Mr. Iliardi's last letter involvement of the Federal U.S. copyright authorities. Since Mr. Mohs has many US patents and

realizes that he must protect his registration or his other intellectual property is rendered useless. Prior registration rights are the world standard and of tremendous World import and if allowed to stand as is in this Century 21 controversey it is worth it for the World Intellectual Property Organazation to take the matter to the World Court at the Hague, Netherlands for an "advisory opinion" not binding on the U.S., however the US if letting this case stand as is might be asked to leave the appropriate convention as a signatory. The matter stands in temporary abeyance until Mr. Mohs files a formal complaint, submitted in French.

NOTE: The previous statements satisfy Rule 14 (d) in reference to opinions delivered in the case by other courts.

Rule 14(e)(i) Date of entry of judgement sought to be reviewed: April 30, 1993.

Rule 14(e)(ii) Date of any order respecting a rehearing, and date and terms of an order granting an extension of time within which to file a petition for a writ of certiorari: None

Rule 14(e)(iii)RE:Cross-petition for certiorari: Non-applicable, none filed.

Rule 14(e)(iv) Statutory provision to confer on U.S. Supreme Court jurisdiction to review judgments in question by writ of certiorari: In respect to questions presented for review on page "- i -" of this document in reference to superior rights of prior registrants of a trade name world custom prevails symbolized by the famous case of Alexander Graham Bell getting to the patent office only 1/2 hour ahead of Elisha Gray to claim prior rights to the invention of the telephone. Prior rights are always superior in all the civilized countries and especially in

all industrialized World Intellectual Property Organization of the United Nations signatory countries. Petitioner was unable to find any supporting case law to the proposition that latter-day registrants have any superior rights whatsoever. Since the founding of the United States patent and copyright institution, ie., the U.S. Patent Office of the U.S. Department of Commerce and the involvement of founding father Benjamin Franklin prior-date registrants have had superior rights, a world respected "given". The Library of Congress concurs.

In reference to question No. 2 on page "-i-" in regards to prior-date registrant not being granted superior rights in this case to date setting a dangerous precedent with the conventions of the World Intellectual Property Organization of the United Nations jeopardization of

our standing as Americans and a signatory nation engineered by Representitive in the United States Congress, 2nd District Wisconsin, Robert Kastenmeier, now retired. Sgr. Alfredo Iliardi and other officials of World Intellectual Property Organization are well aware of this case at law. It is the belief upon information that this Court has jurisdiction to confirm by advisory opinion backed by existing patent and copyright law prior-date registration. Since Century 21 of CA affilliated entities operate in many countries in the world this issue is of prescient concern.

In reference to question No. 3 on page "- ii - in regards to the banning of Mr. Mohs book "The Amazing Mr. Mohs, Titled as the Movie of the Same Name" with its chapter titled "Century 21" it is the belief of this Petitioner that the Court

has an obligation by oath, indeed a duty to observe the First Amendment to the Constitution of the United States of America. For eight years about 4,000 books with a wholesale value of 40,000 Dollars have resided in a warehouse awaiting distribution resumption world-wide. Sales before banning were going well with aviation and motor vehicle buffs with the Henry Ford Museum, Motorbooks International B. Dalton Booksellers, and many others. If this Court chooses unbanning interest and storage charges will require doubling of the wholesale and retail prices, perhaps quashing sale prospects.

This action refers to the United States Court of Appeals decision of April 30, 1993 which is based on the case in Western District WI filed January 7, 1991 Case No. 91-C-0026-C Count Two, paragraph 2 dealing with the above matter in detail.

Rule 14(e) requests a "concise statement of the grounds on which the jurisdiction of this Court is invoked showing:

(i) Date of entry of judgement of judgment sought to be reviewed: April 30, 1993 judgment of the U.S. Court of Appeals in Chicago, Il which appealed the decision of the Hon. Barbara Crabb of the Western District Wisconsin Federal District Court dated: April 11, 1991. Case numbers are 92-1957 in USCA, 7th Circuit; and 91-C-oo26-C in the District Court Western District Wisconsin.

(ii) Date of any order respecting a rehearing to which Petitioner can say that there was no such order nor an extension of time requested or granted to file in respect to a Writ of Certiorari.

(iii) There have been no cross-petition for writ of certiorari filed to the knowledge of Petitioner Bruce Mohs, and Mohs

has notified parties to this case also know as "respondents" by letter of the potential of Supreme Court review of the litigation that has transpired, verbally notified Clerk Marlene Olson of the Western District WI District Court. Petitioner Mohs acting Pro Se requests Pro Se forms if any exist to make notifications as he notes in Rule 12.1 the statement that "who must be a member of the Bar of this Court" further stating "It shall be the duty of counsel (note no provision for Pro Se) to notify all respondents, on a form supplied by the Clerk, of the date of filing and the docket number of the case." Petitioner requests forms if such exist that are applicable for Pro Se representation. No docket number is known at this date. (iv) "The statutory provision believed to confer on this Court jurisdiction to review the judgment or decree by writ of

certiorari." It is the belief of the Petitioner that this Court is a court of last resort and capable of reviewing any decision of lower Federal and State courts and that 28 U.S.C. Article 1257(a) can be considered along with the fact that the Petitioner is a citizen not only of the United States of America but also of Wisconsin origionated under the provisions of the Northwest Ordinance of 1783, a creation of the United States of America following Territorial status into statehood in 1848.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Note: First the U.S. Constitution will be related to this case as ratified and amended, then the Wisconsin Constitution of Mar. 13, 1848 as adopted and amended.

The Constitution of the United States of America, Amendment I.:

"Congress shall make no law respecting

an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press or the right of the people peaceable to assemble, and to petition the government for a redress of grievances." (adopted in 1791). Note: Inserted here in reference to the matter of the banning of Petitioners autobiography by Judge Robert Pekowsky RE; Question No. 3, page ii under "Questions Presented for Review". Also denial of his (Petitioner) right to speak at stockholders meeting of Trans World Corporation October 30, 1985 at World Trade Center, New York, N.Y..RE: violation of SEC rules alleged. Note pages 10 through 12 of Appellants Brief, Docket No. 92-1957 USCA 7th Circuit. The Constitution of the United States of America, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, un-

less on a presentment or indictment of a grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Note: This amendment is related to life in respect to the taking of 20 years plus of Bruce Mohs business career plus much property including over one million dollars in legal fees to date in more than 1.5 decades of continuous litigation, and lack of due process in some instances, including but not limited to condemnation by the State of Wisconsin for highway impro-

vement a property in Madison, WI, the headquarters property of Century 21 of WI with an appraisal of $1,050,000 on U.S. 51 Federal-Aid trunk system highway in violation of U.S.C. Title III Article 301-303 with no payment of fair market value, then withdrawal of condemnation after several years. The Constitution of the United States of America, Amendment VII.:

"In suits at common law, where the value shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law." Note: Jury trial request was not granted in Western District WI District Court. Three major factors of new evidence were to be presented not litigated in State Courts to wit: predation by lawsuit, tortious interference with contract, and the U.S.

Supreme Court decision in regard to the natural zone of expansion theorem for the franchise industry in America.

The Constitution of the United States of America, Amendment XIV Section 1.

"All persons born or naturalized in the United States, and subject in the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of its laws." Note: It has been the experience of this Petitioner than unless the lower courts of this nation are reorganized to give equal strength to individuals and partnerships now enjoyed by corporations in the courtrooms in

respect to the practise of law and the exercise of jurisprudence, then democracy as we were taught and would like to know it is surely dead. The robber baron era as it was known in the 19th century was partially corrected, and that is why this case also carries a Federal Trade Commission reference number and a copy of this submission will be refererenced thereto.

The Constitution of the State of Wisconsin.

Note: In the interests of brevity no quotations from the WI Constitution will be made here but it should be noted that the following articles will be enforced:

Article 1, Section 1 on equality

Section 3 on free speech

Section 5 on right to jury trial

The section on equality involves inherent rights which among these are life, liberty, and the pursuit of happiness.

STATEMENT OF THE CASE

I, the Petitioner, Pro Se will attempt to give as concise a statement as I can of a 17 year long case with 400 pounds plus of legal documents occupying 8 file drawers, all of which are available to this Court upon request. Please bear in mind that Petitioner was and is a Defendant in the initial case No.156-411 brought by Plaintiff Century 21 Real Estate Corporation of Santa Ana, CA in 1977 and upon sale to Trans World Corp. exact date unknown, for 90,000,000 to Art Bartlett (75%) and Marsh Fisher (25%) in U.S. Dollars plus stock considerations, thence to Metropolitan Life Insurance Co. for 251,200,000 U.S. Dollars in 1985.

A suit was filed by Bruce Mohs, in 1991, as Plaintiff, Case No. 91-C-0026-C filed in Western District Wisconsin District Court in 1991 for a suggested amount

of $261,200,000 which constitutes the sale from Trans World Corp. to Metropolitan Life for reversal of alleged illegal transaction plus $10,000,000 for the Plaintiff if Plaintiff prevails.

Thus the case is fought on two levels currently with 156-411 attempted reactivation by Plaintiff Century 21 of CA which is a wholly owned subsidiary of Metropolitan Life Insurance Co. in the State courts in WI, and on the Federal level in regards to a Contempt of Court motion adverse to Bruce Mohs, involving reregistration of "Century 21 of WI", the wording of which involved the WI Secretary of State office since the original 20 year registration came due on March 13, 1993. This case is an outgrowth of the Federal District Court case alluded to above which became 92-1957in U.S. Court of Appeals, 7th Circuit with a dec-

ision that essentialy confirms the Western District WI case in most respects. Thus, on to the U.S. Supreme Court level in regards to the questions presented here. The questions are in respect to 1st Amendment rights and other Constitutional matters. Timliness of registration and the World standard of superior rights to the first registrant is paramount in importance.

THIS IS A CASE OF USURPTION BY A LATTER DAY REGISTRANT OF THE NAME CENTURY 21 FOR A REAL ESTATE ASSOCIATED USE WITH AN ATTEMPT, SO FAR SUCCESSFUL, TO ATTEMPT TO ACHIEVE SUPERIOR RIGHTS IN THE NAME OVER PRIOR DATE REGISTRANT THREE AND A HALF YEARS EARLIER THAN LATTER DAY REGISTRANT. (Capital letters for emphasis) This is the gist of the case as much as can be put in one sentence for brevity. This is a matter of State registrations

for both parties complicated by a Federal registration by Century 21 of CA more than half a year after Bruce Mohs registration.

It should be noted at the outset that Century 21 of WI has attempted to perform its business affairs in a legal fashion. WI Stats. require Assignment of Interest form to be completed and filed in the Secy. of States office when there is a change of ownership, fees paid, as was done in 1980 when Century 21 of WI changed ownership from Mohs-Livesey partnership to Bruce Mohs sole proprietorship. Century 21 of CA has never complied with WI Stat 132.01 in this regard when sale of the franchise system was completed from origionators Fisher and Bartlett to Trans World Corp. then on to Metropolitan Life Insurance Co. This alleged illegality presents the law firm of Decker and Gunta with years of fees correcting thousands of contracts gener-

ated by perhaps a thousand agents.

Century 21 of WI with John Livesey & Bruce Mohs as partners was founded 9PM CDT Dec. 20th, 1972 in the home of Dave Horner in Madison, WI, USA. Any Century 21 in any other place was totally beyond the knowledge of either of the founders. It was founded to establish a one-stop center to arrange for the building of a custom home, engage a real estate agent for lot purchase, contractor, architect, pick out building materiels, etc. A franchiseable concept still viable in 1993. It was decided by the founders Livesey and Mohs that a partnership contract should be drawn up which was accomplished by Attorney Peter Dohr of the Madison, WI firm of Ross & Stevens -- a 50%/50% ownership contract. Mohs provided a 1/3 mile of frontage on Madison's East Beltline and Livesey the management expertise.

All was going in great optimism, established Madison firms willing to lease space, Glenn Miller and Associates the public relations firm promoting the project, etc., then Century 21 of CA arrives. In 1976 in their expansion efforts wanting to "blitz" Wisconsin with advertising as they later termed their efforts in court, the first time Livesey and Mohs heard of this foreign firm from California was when Maxwell Hight, father-in-law of Bruce Mohs and friend of Harry Blackmun who sits on this Court (they were both employees of Mayo Clinic in Rochester, MN) sent an article from Wall St. Journal about another Century 21 from California, also in real estate endeavours.

Bruce Mohs appeared at the WI State Securities Department to forewarn them of a possible incurrsion and usurption attempt and he filed formal notice, that in

turn Secretary Jeff Bartell of the Securities Department let the franchise system in the State from CA causing the seventeen years of litigation and the destruction of the last 20 years of Bruce Mohs business career and loss of over two million dollars of personal wealth. Predation by lawsuit is painfully obvious as legal theorem.

A 1977 case No. 156-411 was filed in Dane County WI Courts for $50,000 in damages, a restraint of trade lawsuit in which Century 21 of CA claimed that ERA (Electronic Realty Associates got first claim on the best independent realtors to sign up as franchisees which was proven wrong with the appearance of Atty. Conohan of the WI Dept. of Securities Franchise Division. A jury trial continued on in March 1984 with Judge Robert Pekowsky presiding, and the net result was not in favor of Defendant Bruce Mohs, the prior registrant.

It is possible that some on the jury might have thought Bruce Mohs too precocious in sending out over 400 letters to brokerages stating that he would protect his name registration and giving the number of same and not mentioning the California Century 21.

The case was appealed to the Wisconsin Court of Appeals with the Honorables Dykman, Gartzke and Eich presiding which reversed the Pekowsky Court decision. Then Century 21 of CA appealed to the Wisconsin Supreme Court and it ordered a new trial at at the Circuit court level. Judge Susan Steingass was chosen by Chief Judge Pekowsky to be the trial Judge. A three week long jury trial took place in September '87 which was essentially a repeat of the Pekowsky trial with about $30,000 in damages including costs instead of approximately $130,000 as in the Pekowsky Court.

Both trials were conducted with the firm of Wyngaard and Wilson representing Bruce Mohs and Century 21 of WI. The firm was dismissed terminating their services when it was discovered just before closing arguments in the second jury trial that the firm was representing A-K Realty-Century 21, the largest franchisee of the California Century 21 in a pending jury trial for a clear conflict of interest. In a non-confidential letter composed before he left the firm Atty. Mike Ash who presented the arguments in the second jury trial composed a letter stating the facts about the eight Century 21 of California law cases being handled by the firm without informing client Bruce Mohs about them. The cases were brought into the firm by Atty. Paul Richard Soglin who advocated no appeal to the WI Court of Appeals where Bruce Mohs won the previous time. He is

presently serving a term as Mayor of the City of Madison, WI.. Bruce Mohs whose business affairs were upset by the two trials and at that time 11 years of contious litigation suffered both a Chapter 11 and Chapter 7 bankruptcies (cases no. 8811-01717 and 887-o1717 in Western District WI Bankruptcy Court, Judge Martin presiding) and with much sacrifice Bruce Mohs was able to pay off both with complete remuneration plus 12% statutory interest. Atty. Frank Ross represented Bruce Mohs in the final stages of the bankruptcy and as soon as Bruce Mohs was out of town going to Italy for Rotary International as Group Leader and District Governors Representative of a Group Study Exchange Team he concocted a quit claim deed and contract for Jeannette Mohs to sign giving the disloyal law firm the Century 21 of WI headquarters property appraised at $1,050,000 to satisfy legal

fees all accomplished without Mr. Mohs knowledge. The Wyngaard and Wilson law firm had previously received many thousands of dollars for representation in the previous jury trial, the Pekowsky Court.

Attorney Bruce Craig of the Wisconsin Department of Justice may be consulted for verification of the facts as he was assigned the responsibility for following the Century 21 cases by Attorney General Bronson LaFollette years ago.

Bruce Mohs then brought suit as Plaintiff Pro Se for the first time in Western District Wisconsin Federal Court, the Hon. Barbara Crabb presiding, in Case No. 91-C-0026-C filed Jan. 7, 1991. The conclusions she arrived at without the requested jury address the six counts brought in the case which are: Count One, Ommision of Fact which concerns the omission from the prospectus in which Trans World proposes sale of the

Century 21 of CA franchise system to Metropolitan Life Insurance Co. for 251,200-000 U. S. Dollars. No mention was made of the lawsuit which could have denied the Insurance company the use of the Century 21 name, possibly 90% of the total value in in dollars based in greatest part on the publics perception of the name. First Amendment rights were not scrupulously followed at the meeting at the World Trade Center Hotel and Bruce Mohs was removed from the meeting unable to take the microphone and tell the truth in regards to the name. Bruce Mohs had written the Metropolitan Life Insurance Co. directors and informed them of possible problems and they let the problems happen anyway. News media were denied questions and CEO of Trans World took the microphone and said that private meetings would take place after the meeting. Thus truth was denied about 300 stockholders

-- a total negation of the First Amendment. In 1985 the banning of Bruce Mohs autobiography telling of the Century 21 first jury trial, his aviation experiences, travel in 100 countries, construction of 1100+ vehicles in his factory, his hotel business matters, etc. Petitioner requests of this Court the recognition of the First Amendment to the U.S. Constitution as a viable and active addition to the Constitution and reversal of the banning of a nonprofane, noninsurectionist, and otherwise noncontroversial book the third book in his body of work.

Count Three in the origional Complaint deals with Century 21 of CA alleged violation of the Delaware Constitution, corporate powers section Article IX Section 1 and may or may not be addressed in Delaware Chancery Court.

Count Four is "Disparagement of Bruce Baldwin Mohs business career since the commencement of litigation by Century 21 Real

Estate Corporation in 1977, and back to December 20, 1972 at the forming of the Bruce Mohs/John Livesey partnership "Century 21".

This Count enumerates the many disparagements of Bruce Mohs already alluded to that includes loss of business advantage, loss of home and Federally licensed seaplane base operated commercially for Federal government U.S. Army Waterways Control Project of Vicksburg, MS among many clients, cessation of production of motorized vehicles at Bruce Mohs factory at Riley, WI (at the time it was Rt.9, Verona, WI), use of over 3,000 shares of M&I (Marshall & Ilsley bank stock now inflated in value to almost One Million Dollars to support family in late seventies and early eighties, distraction from inventing career and comprimise of 19 inventions in Pekowsky Court in 1984 as

attorney for Century 21 of CA John Decker insisted on demonstration of the fact the claim of Bruce Mohs as "inventor" is justified whereupon Bruce Mohs comprimised 19 inventions in file folders to the court in 1984 in Judge Pekowsky's courtroom. Further disparagement included loss of credit by bankruptcies that affected all of Bruce Mohs businesses in a tip over the applecart fashion, to use a popular expression. Because of the buildup of past-due real estate taxes and the extreme cost of hiring several law firms but primarily a law firm known as Wyngaard and Wilson the legal fees built up to astronomical proportions and a $100,000 mortgage was taken by the firm against the headquarters property of Century 21 of WI on Madison's East Beltline appraised currently at over one million dollars -- a third mile of frontage. The law firm threatened fore-

closure and assumed title as alluded to before on page 30, and need not be repeated here, and since it was disloyal representation it was a total loss of over One Million Dollars. The secondary effects of Century 21 of CA's lawsuit initiated in 1977 include loss of higher education for daughter Julie, now 28 and son Eric now 23 and all the advantages of growing up in a stable family enjoying Americas promised constitutional "Happiness".

Included in the cost of litigation was the sale of a 1920 Falls Eight Indy racing car owned by Bruce Mohs since the age of 12 and for 45 more years, a gift from his father Carl Mohs in 1944, a 1928 Lincoln limousine once owned by Tom Mix, a 1965 Lincoln limousine once assigned by the White House for Secretary of Defense McNamara's use, and many other vehicles of historic interest from the Mohs Auto Mus-

eum at 3184 County Highway J, Verona, WI. With the loss of the vehicles it was impossible to maintain the viability of the Der Deutsche Raum German-style restaurant because the special liqour license which was obtained by special bill in the WI legislature outside quota system required 2/3 of the space to be museum.

The financial duress is thus partially demonstrated above caused by 17 yrs. of continuous litigation.

Petitioner has tried to counter some of the effects of disparagement by studying law to pass an interstate bar exam, audit law classes at the University of Wisconsin law school, study the cases in the career of second cousin Marvin Burt who sat on the Supreme Court of Illinois for many years, etc. Education is an assett but it distracts Bruce Mohs from his business pursuits and primary career

as an inventor of safety inventions -- US Patent No. 4, 154, 504 for example billed as the "world's brightest reflectors",

Count Five details the disparagement brought upon the various courts on various levels by the activities of Century 21 of CA's incurrsion into Wisconsin and the expenses of those courts, approximately 3 weeks time for each of the jurors in each of the jury trials, judges salaries, etc. On page 13 of the origional COMPLAINT thru page 14 the California Century 21's law firm represented by Bayard Michael, senior partner of Michael, Best and Friedrich law firm who in a letter offered as Exhibit 12 of the origional COMPLAINT in Western District Wisconsin District Court. In said letter he states in effect there is no need for a lawsuit as both Century 21's are in different segments of the real estate business. Please read this letter with care.

Count Six and the last Count concerns the fact Bruce Mohs and Century 21 of WI in the years in which the two jury trial experiences in the 1984 Pekowsky courtroom and the 1987 Steingass courtroom had never had truly loyal representation as the Wyngaard and Wilson law firm was representing simultaneously eight entities affilliated with Century 21 of CA. This is detailed on page 29 of this WRIT and a letter of confession written by Atty. Mike Ash in a non-confidential letter to the WI Board of responsibility offered as Exhibit 19 in the COMPLAINT in Western District WI Federal court.

This completes the accounting of the "Counts" in the origional COMPLAINT.

BASIS FOR FEDERAL

JURISDICTION

Jurisdiction and venue are provided under USC 28 1338 (a), 15 USC 1121, and

USC 28 1391 (c) respectively. In the alternative jurisdiction is founded on diversity of citizenship 28 USC 1332 (a), in this case South Carolina (Trans World Corporation), New York (Metropolitan Life Insurance Co.), Wisconsin (Century 21 of WI, Bruce Mohs, John Livesey, Century 21 Real Estate Corp. Wisconsin affilliates) Delaware (Corporate registration of Trans World Corp.) and California (Century 21 Real Estate Corp. corporate Headquarters Irvine, CA). In addition Metropolitan Life is owned by its mutual policyholders in practically all the countries in the World. This meets the needs of Rule 14(i) of the Rules of the Supreme Court.

AMPLIFYING REASONS FOR

ALLOWANCE OF WRIT

Supreme Court Rule 14(j) in conjunction with Rule 10 which states causes for approval, states "has so far departed from

the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court". Petitioner believes this case and all related cases have taken a truly extraordinary path through the judicial labarinth, first in State Circuit Court Dane Co. WI Branch 3, thence to the Western Dist. WI Federal Court, Judge Doyle presiding now deceased, thence to Circuit Court Dane Co. WI Branch 5 with Judge Pekowsky, then to WI Court of Appeals with Judges Eich, Gartzke, and Dykman, thence Wisconsin Supreme Court with all seven Justices excepting Abrahamson, thence to Dane County WI Circuit Court with Judge Steingass, and now with Judge Moeser. On the Federal level again with Western Destrict WI Judge Barbara Crabb, thence to U.S. Court of Appeals with Judges Cummings, Cudahy, & Manion, and now in a possibility with the U.S. Supreme Court.

This legal run-around has been caused by the failure of some judges to abide by the Constitution of the United States and simultaneously the Constitution of Wisconsin. A failure to recognize that prior-date registration is the usual world practise in all copyright and registration matters with definitly superior rights. It is a matter of States Rights in that we have a state registration versus both state and Federal registrations of a usurper with the initial prior registration held by the Petitioner predating all other like registrations. Amendment Ten to the U.S. Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Thus the States are empowered to issue certificates of registration of trade names establishing date thereof.

The 1987 trial sanctioned ex-parte donversations ex parte with the jury, a departure from "usual" judicial proceedings and an appropriate motion was filed with the Court, the Attorney General's office in WI and the sitting Governor of the State, one Lee Dreyfus. Judge Steingass of that Court recently underwent voluntary recusal and we now have Judge Daniel Moeser of Dane Co. WI Courts taking her place as a result of the 1987 trial. (Rule 10(a))

When a State court decides a matter that should be a matter for the US Supreme Court as this matter concerns Federal trade name issues with Petitioner feeling that since the States are a product of the Federal government -- in this instance the 1783 Northwest Ordinance -- Federal jurisdiction should prevail. (Rule 10(c))

Attorney ethics involved in disloyal representation, multiple representation of

clients associated with opposition in the court cases by the Wyngaard & Wilson firm representing Bruce Mohs of Century 21 of WI is not only of great concern to Petitioner Mohs but in conversation with Peter Gerighty of the American Bar Association headquarters in Chicago, IL is of concern to all ethical attorneys and courts.

Of Federal concern is the fact that omissions of material fact and Securities and Exchange Commission involvement in the case through its Chicago Regional office because of the possible need to repatriate the Century 21 franchise system back to its prior owners involving over a quarter of a billion dollars is significant. FTC involvement and liabilities of directors of corporations involved has led to Fed-Trade Commission reference number.

THIS CONCLUDES THE MAIN BODY OF THIS WRIT OF CERTIORARI WITH THE APPENDIX TO FOLLOW, Rule 14(k)

APPENDIX

Judgement, U.S. Court of Appeals (U.S.C.A.)
7th Cir, Case 92-1957.....ib
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RULE 14, RULES OF THE SUPREME COURT

10.(k)(i) "Opinion, orders, findings of fact, and conclusions of law whether written or orally given and transcribed (oral recitation was denied - ed.), delivered upon the rendering of the judgment or decree by the court whose decision is sought to be reviewed."

JUDGMENT - WITHOUT ORAL ARGUMENT
United States Court of Appeals
7th Circuit, Chicago, Il. 60604

Date: April 30, 1993

Before: Honorable Walter J. Cummings,

Honorable Richard D. Cudahy

Honorable Daniel A. Manion

All of above Circuit Judges

Case No. 92-1957

Bruce B. Mohs, Plaintiff-Appellant

versus

Trans World Corporation, TW Holdings, SWT Division of Conistan Partner, et al.

JUDGMENT WITHOUT ORAL ARGUMENT

United States Court of Appeals

Seventh Circuit

219 So. Dearborn St., Chicago, IL

60604

CONTINUED:

Appeal from the United States District Court for the Western District of Wisconsin, No. 91-C-26, Barbara B. Crabb, Chief Judge.

This cause came before the court for decision on the record from the above mentioned District Court. On consideration whereof, IT IS ORDERED AND ADJUDGED by this court that the judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered this date. (1060-040593)

O R D E R

Bruce B. Mohs, entrepreneur and author of "The Amazing Mr. Mohs," brought this action pro se alleging violations of the First Amendment and of the Federal securities and trademark laws stemming from prior state court litigation between Century 21 Real Estate Corporation and himself over the use in Wisconsin of the trade name, "Century 21." Jurisdiction was premised upon the existence of federal questions. 28 USC §§ 1331. The district court entered judgment for all the defendants, and this appeal followed.

Mohs' appellate brief, apart from its interesting recitation of the events in controversy here, is rather woefully inadequate.

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argu-

ment would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." Fed. R. P. 34(a); Cir. R. 34 (f). Mohs has filed such a statement. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

It fails to advance any legal argument regarding the propriety of the district court's decision, and it contains a dearth of citation to relevent authority. Fed. R. App. P 28(a)(5); Mc Cottrell v. EEOC, 726 F2d 350, 351 (7th Cir. 1984); United States v. Brown, 899 F.2d 677, 679 n.1 (7th Cir. 1990; Pelfresne v. Village of Williams Bay 917 F.2d 1017, 1023 (7th Cir. 1990). Our job is not to do Mohs' work for him. Pelfresne, 917 F2d at 1023.

Notwithstanding Mohs' noncompliance

with rule 28(a)(5), we agree with the district court that Mohs failed to state a First Amendment claim. Air Wisconsin Pilots Protection Committee v. Sanderson, 909 F2d 213 , 218 (7th Cir. 1990), cert. denied, 111 S.Ct. 958 (1991); that Mohs had no standing under either §§ 12(2) of the Securities Act of 1933, Smolen v. Deloitte, Haskins & Sells,921 F2d 959, 965 (9th Cir. 1990); cf Davidson v. Belcor, Inc., 933 F2d 603, 605-06 (7th Cir. 1991), or Delaware law , Cleaver v. Roberts, 57 Del. 538 544, 203 A2d 63, 66 (1964); and that the district court lacked subject matter jurisdiction to review the Wisconsin state court rulings prohibiting Mohs from using the "Century 21" name, District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923); Leaf v. Supreme Court, 979 F.2d589, 596 (7th Cir. 1992).

We therefor AFFIRM the decision of the district court for the reasons set forth in the attached order.

ATTACHMENT TO USCA DECISION

AS FOLLOWS:

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

BRUCE BALDWIN MOHS,

Plaintiff,

v. ORDER

METROPOLITAN LIFE INSURANCE CO. and CENTURY 21 REAL ESTATE CORP. 91-C-26-C

This is an action for monetary and injunctive releif arising from defendant Century 21 Real Estate Corporation's (Century 21) use of the trade name "Century 21." In addition to state tort claims, plaintiff asserts violations of

the First Amendment and securities and trademark laws. Jurisdiction is asserted under 28 U.S.C. §§1332, 1338, and 15 U.S.C. § 1121.

Plaintiff has filed a motion to add Judge Robert R. Pekowsky and Michael J. Wyngaard as defendants and a document entitled "New Evidence for Court & Request for Injunctive Relief," bothof which I will construe as motions to amend plaintiff's complaint.[1]

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[1] Plaintiff has not submitted an amended complaint that entirely replaces his origional complaint as required by this court; however, in the interest of efficiency I will consider the origional complaint together with the allegations contained in the motions to amend his complaint.

Defendants oppose both motions on the grounds that they are untimely and meritless.

Defendants Century 21 and Metropolitan Life have moved summary judgement on the grounds that jurisdiction is lacking; that plaintiff fails to state a claim upon which relief can be granted; that the claims are precluded by res judicata and collateral estoppel; and that plaintiff lack standing because he did not schedule any of his legal claims as assets when he filed for bankruptcy. Since defendants have addressed the merits of both the origional complaint and proposed amendments I will treat defendant's motion for summary judgment as a motion directed to both the origional and amended complaint. I conclude that summary judgment for defendants is proper for reasons that are more fully set out below.

Plaintiff has submitted a document entitled "Acknowledgment and Admonishment" in which he acknowledges the receipt of the

materials accompanying defendants' motion for summary judgment and requests that Century 21 be enjoined from distributing Century 21 advertisements on the premises of the Ivy Inn. Because plaintiff does not have standing to seek this injunction, I will deny his request.

FACTS-

Plaintiff resides in Wisconsin and is a business person and inventor. Defendant Century 21 is a real estate corporation with its principal office in California. It is a wholly owned subsidiary of Metropolitan Life. Defendant Metropolitan Life is a mutual insurance company with its principal office in New York.

In 1973 plaintiff recorded the trade name "Century 21" with the Secretary of State for Wisconsin for use in advertising merchandise for residential and commercial buildings. On 1977, defendant Century 21

sought permission to provide real estate brokerage services in Wisconsin, but plaintiff objected on the ground that he owned the rights to use the Century 21 trade name.

Counsel for Century 21 wrote the Wisconsin Securities Commissioner on March 24, 1977, stating that plaintiff had never operated a business under the name Century 21 and that plaintiff's use of the name for building supplies did not conflict with Century 21's real estate brokerage business. At or about the time the letter was written. plaintiff placed an advertisement in a local newspaper which stated "Exclusive in Wisconsin - Century 21 - Your Full Line Real Estate Service - Commercial - Residential - Shopping Malls and Arcades - a Livesey-Mohs Real Estate Service."

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[2]Plaintiff has not submitted Proposed

BEST AVAILABLE COPY

Findings of Fact and Conclusions of Law, and he has not challenged any of defendants' proposed findings of fact, despite the detailed instructions that were sent to him with the order dated June 19, 1991. As a result, I have found as undisputed facts defendants' proposed findings of fact (which are amply supported in the record). Plaintiff submitted an untimely response in opposition to defendants' motion for summary judgment which I will consider despite its untimeliness since plaintiff is proceeding pro se.

On April 15, 1977, Century 21 filed a complaint in Dane County Circuit Court alleging trademard infringment and unfair competition against plaintiff and the Livesey-Mohs Partnership's name registration of the trade name Century 21, enjoined them from using the name, and dismissed their counterclaims. Plaintiff attempted unsuccessfully to appeal the partial summary judgment, and then filed an amended answer, affirmative defenses and counterclaims, alleging again that he had superior rights to the trade name Century 21. On the plaintiff's motion, the court reconsidered the

partial summary judgment it had entered and again granted partial summary judgment in favor of Century 21. A jury returned a verdict against plaintiff on the remaining issues, and Judge Pekowsky entered a final judgment on May 18, 1984, enjoining plaintiff from using the Century 21 name or injuring Century 21's business reputation, ordering him to produce all the materials bearing the name Century 21, and entering a damage award against him of $124,501.

In 1985, Transworld Corporation, the owner of Century 21, sold Century 21 to Metropolitan Life. In August 1985, Century 21 became aware that plaintiff was distributing a book in which he described his perception of the litigation involving the Century 21 trade name, and also that plaintiff has written letters to members of the Board of Directors of Metropolitan Life

before its purchase of Century 21 claiming that he owned the trade name Century 21. Based on these developments, Judge Pekowsky entered a memorandum decision on Jan. 9, 1986 finding plaintiff in contempt of the 1984 court order, but no contempt order was entered and plaintiff did not appeal the decision.

On May 1, 1986, the Wisconsin Court of Appeals reversed the trial court's partial summary judgment, reversed the jury verdict and remanded the case for a new trial on all issues. In the second trial, the jury returned a special verdict in favor of Century 21 and awarded compensatory and punitive damages. The relevant jury findings were that plaintiff had not established a protectable right to use the Century 21 trade n ame; did not abandon the trade name; used the Century 21 trade name in a manner likely to cause confusion and

with the intent to deceive the public; intentionally interfered with Century 21's expected business relationship; and did not act with malice in publishing statements that cast doubt on the validity of Century 21's trade mark. On February 9, 988, the Dane County Circuit Court entered an amended judgment on the verdict, awarding declaratory and injunctive relief $4,000.00 in damages and $15,000.00 in punative damages against plaintiff. Plaintiff attempted unsuccessfully to enlarge his time to appeal, and the court entered an order declaring the amended judgment final and nonappealable.

On August 5, 1988, plaintiff filed schedules of his financial affairs in the Bankruptcy Court for the Western District of Wisconsin. During the bankruptcy proceedings, plaintiff attempted unsuccessfully to invalidate a mortgage held by a

law firm Wyngaard & Wilson in security for the payment of plaintiff's legal fees incurred during his litigation with Century 21. In those proceedings plaintiff argued that the mortgage should be invalidated because Wyngaard & Wilson failed to disclose that it was representing Century 21 affiliates at the same time it represented plaintiff in his case against Century 21. The bankruptcy court rejects plaintiff's theory,[3] approved plaintiff's amended disclosure statements on February 10, 1989. The schedules and disclosure statements do not list any of the claims that plaintiff asserts in this action. Plaintiff also filed a grievance with the Board of Professional Responsibility of the Supreme Court of Wisconsin concerning Wilson and Wyngaard's alleged conlict of interest.[4]

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[3]Neither party has provided a transcript or written order from the bankruptcy proceedings, but I take judicial notice of the fact that an order denying plaintiff's objection

to Wyngaard & Wilson's claim was entered on September 25, 1989 in bankruptcy case number MM7-88-01717, in the Bankruptcy Court for the Western District of Wisconsin.

[4] The date and outcome of the Board of Professional Responsibility's investigation have not been provided. However, I infer from the plaintiff's continued attempts to relitigate this issue that the outcome was unfavourable to him.

At some point following the bankruptcy court's determination, plaintiff initiated an action in state court against Paul Soglin, a former lawyer at Wyngaard & Wilson, seeking to invalidate Wyngaard & Wilson's mortgage on the ground that the firm provided "disloyal representation" because it failed to disclose a conflict of interest.[5] Plaintiff also filed a grievance with the Board of Responsibility of the Wisconsin Supreme Court regarding the alleged disloyal representation.[6]

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[5] Plaintiff attached a copy of this complaint to his Preliminary Pretrial Statement, but it is unclear what date the complaint was filed, although the date that the plaintiff signed the complaint is January 30, 1991. No

further information has been provided regarding the current status of this case.

[6] I am unable to determine the outcome of this investigation from the record.

On January 7, 1991, plaintiff filed the complaint in this action against Trans-World Corporation, TW Holdings (allegedly a successor to Transworld Corporation), SWT Division of Conistan Partners, Century 21 and Metropolitan Life. In his complaint plaintiff alleged that TransWorld Corporation violated federal securities law when it offered a prospectus that omitted the material fact that Century 21 was involved in litigation with plaintiff over the use of its trade name, and this omission prevented shareholders from making an educated investment decision regarding thesale of Century 21 to Metropolitan Life. Plaintiff alleged also that his First Amendment rights were violated when he was not permitted to speak at the shareholder's meeting; that the state

court proceedings initiated by Century 21 were frivilous, infected with unfairness and the cause of his bankruptcy; that Century 21's continued infringment of the Century 21 trademark disparaged plaintiff's business; that Transworld and Metropolitan Life abused their corporate powers; and that the law firm Wyngaard & Wilson failed to disclose it represented Century 21 affilliates while simultaneously representing plaintiff in his litigation with Century 21.

In an order dated April 11, 1991, I dismissed plaintiff's complaint against defendants Transworld Corporation, TW Holdings and SWT Division of Conistan Partners for plaintiff's failure to state a claim for which relief may be granted. In another order dated June 19, 1991, I established August 1, 1991 as the deadline for serving and filing amendments to the pleadings. That order required a party to attempt to

obtain permission from opposing parties before filing a proposed amendment, and required any proposed amendment to be accompanied by a motion for leave to amend along with a statement that the party has been unable to obtain the opposing party's consent.

On or about July 15, 1991, defendants informed plaintiff that they would not consent to plaintiff's proposed addition of Michael J. Wyngaard and Judge Robert Pekowsky as defendants. On August 7, 1991, plaintiff filed a motion to add Judge Pekowsky and Michael Ash, an lawyer at Wyngaard & Wilson, as defendants, and on August 9, 1991 plaintiff filed a motion titled "New Evidence for the Court and Request for Injunctive Relief by Plaintiff."

OPINION

Defendant's oppose plaintiff's motions to amend his complaint on the ground that they are untimely. However, the technical rules of civil proceedure are relaxed for

pro se plaintiffs, and it does not appear that defendants will be prejudiced by my consideration of plaintiff's motions, despite their untimeliness and lack of conformity to civil proceedure requirements. Because defendants also oppose the amendments on the same grounds as they oppose the original complaint, I will consider defendant's motion for summary judgment as directed to all of plaintiff's claims, amended and original.

Federal Securities Law

Plaintiff contends that Transworld Corporation colluded with Metropolitan Life to violate federal securities law by offering a prospectus that omitted the material fact that Century 21 was involved in litigation with plaintiff over the use of its trade name. In the April 11, 1991 order I dismissed this claim against Transworld, TW Holdings, and SWT Division because plaintiff

did not buy the security and therefore did not have standing to maintain an action under §§ 12(2) of the Securities Act of 1933, 15 U.S.C. §§ 77(1)(2). Furthermore, even if plaintiff had bought a security, his claim would be barred by the one-year statute of limitations, 15 U.S.C. §§ 77 (m), and plaintiff's broad allegations of collusion between Transworld and Metropolitan Life were "too vague to establish the basis for any claim that these defendants violated a particular law that resulted in harm to plaintiff."

For these same reasons I will dismiss the action against the remaining defendants. Plaintiff has not refined his allegations and even if he had alleged collusion with sufficient specificity, plaintiff's claim would fail because he lacks standing and the statute of limitations bars his claim.

First Amendment Rights

Plaintiff contends that his First Amend-

ment rights were abridged when he was prevented from speaking at the shareholder meeting in New York concerning the sale of Century 21 to Metropolitan Life. As I explained in the April 11, 1991 order, the United States Constitution limits governmental action, not private action. See Spencer v. Lee, 864 F2d.1376, 1378 (7th Cir. 1989), cert. denied 110 SCt. 1317 (1990). Not only does plaintiff fail to allege any governmentas participation, he also fails to allege that Century 21 or Metropolitan Life were involved in preventing plaintiff from speaking at the meeting. Therefor, This claim will be dismissed for plaintiff's failure to state a claim under Fed. R. Civ. P. 12(b)(6).

Abuse of Corporate Power

Plaintiff contends that Transworld Corporation's conduct at the shareholder meeting constituted an abuse of power warr-

anting the revocation of its corporate charter under the laws of Delaware. In the April 11 order I dismissed this claim because plaintiff failed to allege any facts that would explain how any such abuse affected or injured his interests. Furthermore, this court has no power to grant plaintiff relief because Delaware law specifies that any proceedings to revoke a corporate charter must be taken by the Delaware General Attorney.

Plaintiff makes no allegations regarding this claim against Century 21, and only vague allegations that Metropolitan Life was involved in Transworld's alleged abuse of corporate power. As discussed above, these allegations are too vague to state a claim, and even if they were sufficiently specific plaintiff has no federal claim because federal court is not the proper forum for revoking a corporate charger granted by the State of Delaware. Therefor this claim

dismissed for plaintiff's failure to state a claim under Fed. R. Civ. P. 12(b)(6).

Relief from State Judgments

Distilled to their essential nature plaintiffs claims all arise from his disagreement with the state court rulings prohibiting him from using the Century 21 name. He attacks the rulings on the grounds that the lawsuits instigated against him were frivilous; the rulings adverse to him were incorrectly decided, and that Michael Ash, a lawyer at the law firm of Wyngaard and Wilson who represented plaintiff during the second jury trial also represented A-K Realty, a Century 21 franchisee, which precluded Ash from vigorously and objectively representing plaintiff. Plaintiff contends that the protracted and frivilous litigation innitiated by Century 21 has disparaged plaintiff's business and driven him to bankruptcy.

As I stated in the order dated April 11, 1991, federal district courts do not have authority to review the outcome of claims brought and decided in state court, even when the plaintiff characterizes his claim as a new injury or one of consititutional dimensions. See, e.g., Jentges v. Milwaukee County Circuit Court, 733 f.2d 1238, 1244 (7th Cir. 1984)(federal court will not set aside conviction in guise of due process review simply because it might disagree with the state court's interpretation of state law)(citing United States ex. rel. Burnett v. People of the State of Illinois, 619 F2d. 668 (7th Cir.), cert. denied, 449 U.S. 880 (1980); Hale v. Harney, 786 F2d 688, 691 (5th Cir. (1986)(litigant challenging trial courts ruling in divorce case cannot style suit as civil rights claim to obtain review in

federal court id "in essence" court is being asked to review state decision); see also the Order and Opinion entered herein on April 11, 1991, at page 12.

Plaintiff does not allege a constitutional infirmity in the state court proceedings; rather, his primary complaint is that he disagrees with the state's decision. This court cannot "modify, review or annul the orders and judgments" of state courts. Town of Hopkins v. Cobb, 466 F. Supp. 1212, 1214 (D.S.C. 1979). The proper avenue for obtaining such review is through the appellate courts of the state. Id. at 1214 (citing Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Plaintiff's claims against Century 21 and Metropolitan Life are essentially only an attempt to relitigate the issue of who owns the Century 21 trademark, an issue already fully

explored in state court.

Furthermore, plaintiff's claim that Century 21's litigation was frivilous is meritless because Century 21 prevailed in protracted state court proceedings. Even if Century 21's state claim was frivilous the proper avenue for redress was in the state court proceedings regarding the Century 21 trade name. Wis. State §§814.025 (providing for the award of costs for frivolous actions at any time during the proceedings). Similarly, any claims of business disparagement arising from Century 21's use of the trade name should have been raised in the state proceedings litigating the issue of who may use the trade name in Wisconsin.

Even if this court could review the state court decision, plaintiff would not be intitled to a new trial on the ground that his attorney refused to disclose a

conflict of interest, because each party is "deemed bound by the acts of his lawyer-agent....: Links v. Wabash R.R.,370 U.S. 626, 633-34 (1962); Village of Big Bend v. Anderson, 103 Wis2d 403, 308 N.W.2d 887, 889 (Wis. Ct. App. 1981). Plaintiff's recourse is a suit for malpractice, such as the one he is pursuing in state court.

In addition to a new trial, plaintiff seeks to set aside Wilson & Wyngaard's mortgage on plaintiff's property because of the alleged conflict of interest. This claim was rejected by the bankruptcy court, and if plaintiff desired to appeal that decision, he must have filed a notice of appeal within 10 days of the entry of the final order. Bankruptcy Rule 8002 (a); In re Souza, 795 F2d 855 (9th Cir. 1986)(10 day filing period strictly construed). Nothing in the record suggests that plaintiff has filed a notice of appeal. Plaintiff cannot now seek to

Injunction

In his "Acknowledgment & Admonishment" plaintiff alleges that Century 21 has been "loitering" on and in the premises of the Ivy Inn to distribute Century 21 advertiseing. Plaintiff requests that Century 21 be enjoined from this activity and in return he offers to cease advertising the "Century 21 (of WI) in the office area of either Mr. Zaslav or Mr. Decker."[7] Because Pro Se plaintiffs are to be treated liberally, I will construe plaintiff's request as a motion for preliminary injuction.

Plaintiff does not allege that the distribution of advertisements has violated any legal right of his, a necessary prerequisite to seeking an injunction. Palmer v. city of Chicago, 755 F.2d 560, 573 (7th Cir. 1985) (Plaintiff must allege sufficient harm to have standing to seek injunction). It has already been determined in lengthy state pro-

ceedings that plaintiff has no rights to the Century 21 trade name, so plaintiff cannot claim the injury of trademark infringement. Another possible injury might be that of trespass, but any trespass would injure the Ivy Inn, not plaintiff. If any person or entity has standing to seek an injunction, it would be the Ivy Inn, not plaintiff. Because no right of plaintiff is being violated, plaintiff's motion for an injunction will be dismissed for lack of standing. Even if plaintiff did have standing it is unlikely that an injunction would be granted because plaintiff has failed to show a likelihood of success on the merits of his claim, in impending irreparable injury resulting from the distribution, or the absence of an adequate remedy at law. Cox v. City of Chicago, 868 F.2d 217, 219

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[7] Mr. Decker is the attorney of record for defendants, but Mr. Zaslav's relationship to this dispute is unclear.

(7th Cir. 1989).

Because all of plaintiff's claims will be dismissed for failure to state a claim, lack of jurisdiction, or lack of standing, and because the claims asserted against Judge Pekowsky and Michael Wyndgaard have no merit, I will deny plaintiff's motion to amend the complaint to add these two defendants. This disposition of the case makes it unnecessary to address defendant's argument that plaintiff lacks standing to assert the claims set forth in his complaint because he failed to list them as assets in his bankruptcy schedule of assets.

ORDER

IT IS ORDERED THAT plaintiff's motion to amend his complaint is DENIED, defendant's motion for summary judgment is GRANTED, and plaintiff's motion for an injunction is DENIED. The Clerk of Court is directed to

enter final judgment for all defendants.

Entered this 4th day of November 1991.

BY THE COURT:

BARBARA B. CRABB
District Judge

STATE OF WISCONSIN, CIRCUIT COURT BR. 5

DANE COUNTY

CENTURY 21 REAL ESTATE CORP.,

Plaintiff,

v.

BRUCE B. MOHS,

Defendant.

MEMORANDUM DECISION
CASE NO.156-411

The Plaintiff has moved for a find- of contempt and imposition of remedial sanctions, alleging the Defendant's intentional disobedience to an order of the Court. The Defendant responds that the actions were not in disobedience of

the order but rather were instances of the Defendant exercising his right to speak, which is protected by the First Amendment of the United States Constitution.

On May 18, 1984, the Court ordered the Defendant to be permanently enjoined from:

a. Using the name and mark CENTURY 21 or any other confusingly similar name or mark in the advertising and sale or real estate services or any other goods or services.

b. Using in any manner any service mark, tradename, trade dress, words numbers, abbreviations, designs, colors, arrangements, collections, or any combination thereof which would imitate, resemble or suggest Plaintiff's service mark and trade

mark.

c. Otherwise infringing Plaintiff's service mark and trade mark.

d. Unfairly competing with Plaintiff, diluting the distinctiveness of Plaintiff's service mark and trade name, and otherwise injuring Plaintiff's business reputation in any manner.

e. Interfering with Plaintiff's prospective advantage or established business relationship.

Following that order, the Defendant has published an autobiography which contains a drawing showing the name "Century 21" on a rendition of a building he at one time contemplated building. The autobiography also describes the Defendant's version of his dealings with the Plaintiff, statements which the Plaintiff feels with damage his business reputation. In addition, the Defendant has sent letters to members of the board of directors of an

organization considering purchasing the Century 21 Real Estate Corporation. The Plaintiff argues that these letters are calculated to infringe and dilute Plaintiff's trade name and to interfere with the proposed sale.

The Court has reviewed the materials published in the autobiography and letters sent to the prospective purchaser and concluded that they do represent instances of using a service mark or trade name suggestive of the Plaintiff's service mark and trade name. The Court also conscludes that the letters sent to the directors of the organization considering purchase of the plaintiff corporation do interfere with the plaiantiff's prospective advantage or established business relationships. These are intentional violations of the Court's order. Consequently a finding of contempt is approp-

riate, since these actions are in clear disobedience of the Courts order of May 18, 1984.

The Defendant's argument that his statements are protected by the First Amendment fail to mitigate the clear disobedience of a court order. The First Amendment is not a license to take any actions an individial desires. The right to free speech must be balanced against overt violations of explicit court orders. If the Defendant's arguments were to prevail, court orders would become meaningless suggestions that could ealily be avoided by raising the protective sheild of the First Amendment.

The Court concludes that, pursuant to sec. 875.0,(1)(b), Wis. Stats., the Defendant is in contempt of court and under sec. 885.05 (1)(c). Wis Stats., will assess a forfeiture to be determined. The Defendant shall have the right to purge his contempt. The Court now directs the Plaintiff to prepare proposed

terms of the purge order within ten days, with the Defendant having ten days to respond and the Plaintiff five days to reply. The parties are invited to argue the effective-date and the amount of the forfeiture.

Dated this 9th day of January, 1986.

BY THE COURT

_____

ROBERT R. PEKOWSKY, Judge
Dane Co. Circuit Court Br.5

Supreme Court, U.S.
FILED
DEC 9 1993
OFFICE OF THE CLERK

No. 93-747

In The

Supreme Court of the United States

October Term, 1993

BRUCE BALDWIN MOHS,

Petitioner,

v.

CENTURY 21 REAL ESTATE CORP., a wholly-owned subsidiary of METROPOLITAN LIFE INSURANCE COMPANY, a Mutual Insurance Company, and TRANS WORLD CORP., a Delaware Corporation,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN RESPONSE TO PETITION

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QUESTIONS PRESENTED FOR REVIEW

Respondents Century 21 Real Estate Corp. and Metropolitan Life Insurance Company object to the form and substance of the "Questions Presented" in the Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit ("Petition") and believe the questions should be as follows:

1. Does the Supreme Court have jurisdiction to consider the Petition, where review is sought under 28 U.S.C. §1257(a), but there has been no decision of a state court of last resort?

2. Has the Petitioner made a showing under Supreme Court Rule 10 that this Court should review the decision of the Court of Appeals for the Seventh Circuit?

PARTIES

The names of all parties appear in the caption of the case.

Respondent Century 21 Real Estate Corp. is a California Corporation duly organized and existing under the laws of the State of California. It has no subsidiaries, other than wholly owned subsidiaries. Its parent company is Metropolitan Life Insurance Company.

Metropolitan Life Insurance Company is a mutual insurance company. It has no parent company. Its subsidiaries (except wholly owned) are as follows:

Blodgett Holdings, Inc.
Braelan Corp.
Briggs Plumbing Products, Inc.
Cicero/Cermak Corporation
Clover Leaf, Inc.
Dan River, Inc.
FB Briggs, Inc.
Genesis Seguros Generales, Sociedad Anonima De Seguros Y Reaseguros
GS Blodgett Corporation
GS Blodgett Inc.
GS Blodgett International Ltd.
Igloo Holdings, Inc.
Igloo Products Corporation
Kolon-Met Life Insurance Company
Lincoln Group Holding Corp.
Magikitch'n, Inc.
Mecco Holding, Inc.
Metlife Portfolios, Inc.
Metropolitan Structures, Inc.
Metropolitan Structures West, Inc.
Pitco Frialator, Inc.
Santander Met, S.A.
Seguros Genesis, S.A.

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OPINIONS BELOW

The April 10, 1993 decision of the United States Court of Appeals For the Seventh Circuit is reproduced in the Appendix to the Petition for Writ of Certiorari at 1b - 1g. Respondents Century 21 Real Estate Corp. and Metropolitan Life Insurance Company (hereinafter collectively "Respondents") object to the format of the order provided in Petitioner's Appendix, in that it contains Petitioner's editorial comments (at pp. ib - ic), which should be struck from the decision.

The November 4, 1991 Order of the United States District Court for the Western District of Wisconsin is reproduced in the Appendix to the Petition at pp. ig - jg.

The April 11, 1991 Opinion and Order of the United States District Court for the Western District of Wisconsin was not reproduced in the Appendix to the Petition, and is therefore reproduced in the Respondents' Appendix.

The January 9, 1986 Memorandum Decision of the Dane County, Wisconsin Circuit Court is reproduced in the Appendix to the Petition at pp. jg - jl.

Respondents object to Mohs' rendition of various decisions referenced in his Appendix, but not fully reproduced, specifically at pp. lh - ik. Those decisions, however, are of no significance for this Court's review.

JURISDICTIONAL STATEMENT

The Respondents Century 21 and Metropolitan Life object to Petitioner's jurisdictional statement, which is

predicated only upon 28 U.S.C. §1257(a). That section provides:

> §1257. State Court; certiorari
>
> (a) Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question and where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.
>
> . . .

As discussed below, no decision of the Supreme Court of Wisconsin is sought to be reviewed. Petitioner's citations at pages 39-40 of the Petition to 28 U.S.C. §§1338(a), 1391(c), 1332(a), and 15 U.S.C. §121 are also inapplicable to this Court's jurisdiction and apply only to District Court jurisdiction. Petitioner has failed to cite any basis for this Court's jurisdiction of this case.

As further set forth in the Discussion portion of this brief, Respondents believe the Supreme Court has no jurisdiction in this case. None of Petitioner's claims were ever considered by the Wisconsin Court of Appeals or the Wisconsin Supreme Court, and Petitioner failed to state federal claims in his action brought before the federal courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents object to Petitioner's statement of Constitutional Provisions and Statutes Involved (Petition at 15-20). The Petition cites various United States Constitutional Amendments, and portions of the State of Wisconsin Constitution. With the possible exception of the First and Fourteenth Amendments, none of these provisions are applicable to the issues presented.

The statutes and rules involved in this case are as follows:

Rule 10 of the Rules of the Supreme Court

. . .

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals in the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal

question in a way in conflict with applicable decisions of this Court.

. . .

STATEMENT OF THE CASE

Respondents incorporate by reference the statement of facts set forth in the April 11, 1991 and November 4, 1991 decisions of the United States District Court for the Western District of Wisconsin. (Petitioner's Appendix ig - jg; Respondents' Appendix 1-14) Respondents also provide the following procedural background information.

Litigation in Wisconsin state courts between Petitioner and Respondent Century 21 initially was commenced by Century 21 Real Estate Corp. against Bruce Mohs and John Livesey (not a party to the Petition) in 1977, following their filing of a Wisconsin trademark registration for "Century 21" "as pertains to building industry merchandising. (Advertising and display of building supplies, materials and merchandise for residential and commercial buildings.)" Century 21 Real Estate Corp. claimed the Mohs-Livesey registration, and other acts, conflicted with its rights under the common law and the Wisconsin trademark registration act. In 1983 Century 21 obtained a partial summary judgment ordering the Wisconsin Secretary of State to cancel the state trademark registration on the grounds that it had been abandoned by Livesey and Petitioner Mohs through lack of actual use in commerce. The remaining issues were tried to a jury in 1984, and the verdict awarded more than $124,000.00 in compensatory and punitive damages in

favor of Century 21 and against Petitioner. Judgment was entered awarding injunctive relief under the Wisconsin trademark registration law as well as monetary damages in accordance with the verdict. Petitioner was enjoined from infringing Century 21's trademarks, from unfairly competing with Century 21 or otherwise injuring its business reputation in any way, and from interfering with Century 21's prospective advantage or established business relationships.

Petitioner appealed the judgment to the Court of Appeals of Wisconsin. While the appeal was pending, Petitioner became aware that Metropolitan Life Insurance Co. was negotiating with Trans World Corp. for the purchase of Century 21's stock. He wrote to members of Metropolitan Life's board of directors in September 1985 asserting that Petitioner had the rights to Century 21's most important asset – its name. Petitioner's letters also transmitted copies of a vanity press autobiography, "The Amazing Mr. Mohs – Titled as the Movie of the Same Name", inviting attention to a chapter on "Century 21." In that portion of the book, Petitioner asserted that the *Century 21 v. Mohs* jury trial had been "rigged," that Petitioner had been prevented from presenting evidence that there was some connection between Century 21 and organized crime, and that the people from Century 21 were thieves.

Respondent Century 21 instituted civil contempt of court proceedings against Petitioner before the state court which had entered the judgment. After briefs were submitted and a hearing was held, the court issued a January 9, 1986 Memorandum Decision (Appendix jg - jl) determining that Petitioner had wilfully violated the terms of

the injunction and therefore was in contempt of court. No sanctions were imposed by the Decision, no further proceedings were had on the contempt matter, and Petitioner took no appeal from the Memorandum Decision. On May 1, 1986, the state appellate court reversed and vacated the 1984 judgment against Petitioner, on the grounds that the pretrial partial summary judgment cancelling the trademark registration improvidently had been entered. The case was remanded for a new trial on all issues.

The second jury trial in the state court action was held in 1987. The second verdict awarded compensatory and punitive damages in favor of Respondent Century 21 and against Petitioner. Through answers to special verdict questions, the jury also determined, among other things, that Petitioner did not establish a protectable interest in "Century 21" as a trademark or tradename, that Petitioner had used "Century 21" to deceive the public, and that Petitioner had interfered with Respondent Century 21's business. A judgment awarding monetary damages and injunctive relief thereafter was entered. No transcript of the trial was made, and Petitioner took no appeal from the judgment. A motion to enlarge the time for appeal was denied following a hearing in 1988.

At the time of both jury trials and at the time of the contempt proceedings, Mohs was represented by counsel. Counsel also represented him on post-verdict motions following the second jury trial, but Petitioner appeared *pro se* on the post-judgment motion to enlarge the time for appeal.

On January 7, 1991 Petitioner filed an action *pro se* against Century 21 Real Estate Corp. and Trans World

entities in federal court. The District Court dismissed as meritless Petitioner's untimely "amended claims" against one of Petitioner's former trial counsel and the state trial judge who presided over the first jury trial and the civil contempt proceedings. In dismissing Petitioner's action as against Respondents Century 21 and Metropolitan Life, the District Court observed that the federal suit was essentially an effort to relitigate the matters decided adversely to him in state court proceedings concerning rights to the tradename "Century 21." (Appendix iz - jb) Dismissal of claims against the Trans World defendants was predicated on lack of standing, expiration of the Statute of Limitations and failure to state a claim on which relief can be granted.

Petitioner then appealed the District Court's decision to the Seventh Circuit Court of Appeals. On April 30, 1993, the Court of Appeals affirmed the District Court's dismissal. (Appendix ib - lg)

SUMMARY OF ARGUMENT

The Petition should be denied because this Court lacks jurisdiction, and because the Petitioner has failed to demonstrate recognized bases upon which to issue a writ of certiorari.

DISCUSSION

I. SINCE NO DECISION OF THE WISCONSIN SUPREME COURT ADVERSE TO PETITIONER HAS BEEN ISSUED IN THIS MATTER, THIS COURT HAS NO JURISDICTION UNDER 28 U.S.C. §1257(a).

The Petition cites only 28 U.S.C. §1257(a), quoted above, in support of jurisdiction of this Court. Yet the litigation between Century 21 and Petitioner in the Wisconsin courts never produced a decision of the Wisconsin Supreme Court adverse to Petitioner. The only contact the state supreme court had with the litigation came in 1986, when it denied an application for review of the decision of the intermediate court of appeals which reversed the 1984 jury verdict and judgment.

Petitioner never sought any review, in any state appellate court, of the 1986 contempt decision, and did not file an appeal from the judgment against him following the second jury trial.

Simply put, there is no decision of "the highest court of a state" to be reviewed, and 28 U.S.C. §1257(a) has no applicability here.

II. PETITIONER HAS FAILED TO SUGGEST THE STANDARDS OF SUPREME COURT RULE 10 HAVE BEEN MET FOR ISSUANCE OF A WRIT OF CERTIORARI TO THE SEVENTH CIRCUIT.

A grant of certiorari is purely discretionary. Although not wholly inclusive, Rule 10 of the Rules of the

Supreme Court sets forth the standards this Court considers in exercising its discretion whether to grant certiorari. Mohs has not asserted anything in his rambling, overlong Petition that would invoke the jurisdiction of this Court.

A. Petitioner Points To No Conflicting Federal Court Decisions.

Petitioner has failed to point to any conflicting federal court decisions (or to any federal court decisions at all) as a basis for this Court to grant his petition. The gravamen of the Petition appears to be that, since Mohs was first to file a state trademark registration containing a particular term, no one can obtain superior rights to the name. In doing so he ignores the fact that a state trademark registration was involved; that Wisconsin law was applied by Wisconsin courts; that a Wisconsin jury determined Petitioner never established a protectable interest in the mark in question; and that the jury also found Petitioner used the mark for improper purposes.

One of the deficiencies of Petitioner's appeal to the Seventh Circuit, as pointed out by that Court, was Mohs' failure to make legal argument or to cite any legal authority in support of his statements. It is not the Court's job to do Mohs' work for him. (Appendix 1e) Nor is it the job of this Court, or of these Respondents.

B. Petitioner Shows No Departure from the Usual Course Of Judicial Proceedings.

In the portion of his Petition entitled "Amplifying Reasons for Allowance of Writ" Petitioner cites Supreme Court Rule 14(j) in arguing that the Petition should be granted, based on the lower courts "[having] so far departed from the accepted and usual course of judicial proceedings, or [having] sanctioned such a departure by a lower court." But Petitioner fails to show any such departure. Petitioner's principal complaint appears to be that the state court proceedings took considerable time and expense to resolve. Yet the record reflects that Petitioner and his counsel engaged in extensive procedural maneuvering. Petitioner also invites this Court to reconsider issues already decided, solely because he did not like the results of those lower court proceedings. This is not an appropriate function of a writ of certiorari.

C. No Decision Of A State Court of Last Resort is Implicated.

Mohs' state court action, which resolved most if not all of the issues alluded to in his present Petition, was never appealed by Petitioner after the ultimate jury verdict. The First Amendment issues were raised and addressed by the state court contempt proceeding, as well as in the District Court's Memorandum Decision. (Appendix jg - jl) Petitioner's failure to appeal the state court action bars his ability to pursue before this Court issues which were pending in the state trial court. The statute, 28 U.S.C. §1257(a), only allows this Court to review by writ of certiorari final judgments or decrees

rendered by the highest court of a state in which a decision could be had. The contempt issues and First Amendment grounds for opposing the imposition of contempt sanctions never proceeded beyond the state trial court in 1986 or at any time thereafter. No Wisconsin appellate court ever was asked to review the contempt finding. Further, since the underlying injunction was vacated on other grounds, and no sanction ever was imposed, the point is moot. *See Hall v. Beal*, 396 U.S. 45, 48 (1969); *Marshall v. Whittaker Corp.*, 610 F.2d 1141 (3d Cir. 1979).

D. Petitioner Makes No Showing That A Federal Question Has Been Decided In Conflict With Decisions Of The Supreme Court.

Petitioner has failed to show that either a state or federal court decided "an important question of federal law which has not been, but should be, settled by this Court." Instead, it appears that Petitioner is dissatisfied with the application of the common law by Wisconsin trial courts and the interpretation of the Wisconsin trademark registration statute by those courts.

Nor has Petitioner claimed or shown that the Seventh Circuit, the District Court or the state trial court decided a federal question in conflict with applicable Supreme Court decisions on the contempt question. The District Court noted this Court's decision in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), in determining that it lacked subject matter jurisdiction to "modify, review or annul the orders and judgments" of state courts. The Seventh Circuit affirmed, citing *Rooker* and the more recent decision in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

The state court found in 1984 that Petitioner violated the state trademark registration statute and engaged in unfair trade practices. The resulting injunction restricted Petitioner's actions with respect to Respondent Century 21's business and with respect to use of the term Century 21 as a trade name or mark. The decision was consistent with this Court's holding that, where a party violates statutory requirements, it can expect some "fencing in." *FTC v. National Lead Co.*, 352 U.S. 419, 431 (1957). Such limitations may apply where speech, and First Amendment rights, are concerned. *Szabo v. U.S. Marine Corp.*, 819 F.2d 714, 721-22 (7th Cir. 1987).

Petitioner was found to be in contempt of court in January 1986. He took no further action, at any time by way of appeal or otherwise, to have that determination reviewed in the state courts. His federal court action was not filed until a full 5 years after entry of the contempt decision and 4 1/2 years after the underlying injunction was vacated by the state appellate court on other grounds. When the federal action was filed in 1991, there was no live controversy in effect concerning the contempt decision, and thus there was no proper basis to adjudicate any Constitutional question. *Hall v. Beal*, 396 U.S. 45, 48 (1969). Since Petitioner took no prompt action to attempt to secure review in any forum, he has failed to satisfy the principal – and only applicable – test for avoiding the bar of mootness. *Marshall v. Whittaker Corp.*, 610 F.2d 1141 (3d Cir. 1979).

CONCLUSION

Respondents Century 21 Real Estate Corporation and Metropolitan Life Insurance Company respectfully request that the Petition for Writ of Certiorari be denied.

Dated this 9th day of December, 1933.

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and Metropolitan Life
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRUCE BALDWIN MOHS,

Plaintiff,

OPINION and ORDER
91-C-026-C

v.

TRANS WORLD CORPORATION,
TW HOLDINGS, successor to
the above, SWT DIVISION OF
CONISTAN PARTNERS involved
in the transition phases from
TRANS WORLD CORP. to
its present successor entities,
METROPOLITAN LIFE INSURANCE CO., and
CENTURY 21 REAL ESTATE CORP.,

Defendants.

This is an action for monetary and injunctive relief for violations of the securities laws, the First Amendment, and trademark laws, stemming from the use of the name Century 21 in Wisconsin and litigation instigated in Wisconsin state courts by defendant Century 21 Real Estate Corporation. Jurisdiction is asserted under 28 U.S.C. §§1332, 1338 and 15 U.S.C. §1121.

Defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partners have moved for dismissal of plaintiff's complaint pursuant to Fed. R. Civ. P. 12 (b) for failure to state a claim, for lack of personal jurisdiction, and for insufficient service of process.

Because I agree with the moving defendants that plaintiff has failed to state a claim against them for which relief may be granted, I do not reach the other grounds for dismissal.

For the sole purpose of deciding the motion to dismiss, I take as true the following factual allegations of the complaint.

Allegations of Fact

Plaintiff is an adult citizen and resident of Fitchburg, Wisconsin. Defendant Trans World Corporation is a publicly held corporation chartered in Delaware and headquartered in New York. Defendants TW Holdings and TW Services, successor corporations to Trans World Corporation, are headquartered in New Jersey and South Carolina respectively.[1] Defendants TW Holdings, TW Services, and Trans World Corporation are all registered as corporations in Delaware. Century 21 Real Estate Corporation is a wholly owned subsidiary of Metropolitan Life Insurance Corporation, and was at certain times relevant

---

[1] Plaintiff refers to "TW Services" as a successor corporation to Trans World Corporation. However, he has not listed this entity as a defendant in the caption to his complaint or alleged any particular liability on its part. Therefore, I will not construe plaintiff's complaint as attempting to state a claim against TW Services.

Plaintiff does not allege any facts regarding the location or incorporation of "SWT Division of Conistan Corporation," listed in the caption as a defendant.

to this action a wholly owned subsidiary of Trans World Corporation.[2]

On October 30, 1985 at a meeting at the World Trade Center in New York, defendants offered a prospectus to stockholders of record, former stockholders, and all present. The purpose of this meeting was to vote on the proposed sale of the Century 21 franchise system to Metropolitan Life Insurance Company for $251,200,000.00. At the time, plaintiff was a former stockholder of Trans World Corporation. Plaintiff did not contemplate buying any stock at this meeting.

In March 1973, plaintiff had filed a statement of adoption of the name "Century 21" with the Wisconsin Secretary of State. Plaintiff planned to use the name for a partnership that would develop a "one-stop home shopping" facility offering building supplies and financial services.

Plaintiff used the Century 21 name in Wisconsin over three and one-half years ahead of defendant Century 21 Real Estate corporation, which filed a statement of adoption with the Wisconsin Secretary of State in December 1976. Plaintiff adopted the name over one half year before Century 21's federal registration of its name. The Wisconsin-based Century 21 company never had a federal registration. Both firms started at about the same time, unknown to the other.

---

[2] Plaintiff's complaint does not clarify the specific type of business in which each defendant is engaged, or explain the relationship among defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partners.

Trans World Corporation was not authorized to do business in Wisconsin as of September 1981, or in 1985 when it offered the prospectus on Century 21.

In the prospectus offered at the October meeting, Trans World Corporation omitted the material fact that Century 21 was engaged in litigation over the use of the "Century 21" name in Wisconsin.

The franchise system of Century 21 and its trade name are the principal assets of Century 21 Real Estate Corporation. The value of the franchise system's name to Century 21 was 90% of the total value of the corporation. Therefore, the omission of the ongoing litigation concerning ownership of the Century 21 name violated instructions in the securities regulations specifying that a company must include in its registration statements and other reports any nonroutine ongoing litigation that affects over 10% of the value of the company.

The omission of information about this litigation misled the stockholders and others at the meeting into thinking that all was well with Trans World Corporation's wholly owned subsidiary, Century 21 Real Estate Corporation. The very existence of the company was in jeopardy, in light of the fact that the Wisconsin Court of Appeals had rendered a decision in favor of plaintiff on May 1, 1986.[3] Had Trans World Corporation included

---

[3] Plaintiff's exhibits include a January 1986 memorandum from a Dane County circuit court judge, in which the judge found that plaintiff's publication of his autobiography and other activities rendered plaintiff in contempt of an earlier injunction prohibiting him from interfering with defendant Century 21's service and trade mark.

information about the ongoing litigation in the prospectus, stockholders and other parties could have made an honest and educated decision on the sale of the franchise system. Trans World Corporation abused its corporate powers in the meeting held on October 30, 1985. Plaintiff was not allowed to tell the over 300 stockholders present at the meeting the truth about the omissions in the prospectus.

Prior to the October 30 meeting, the legal departments of Metropolitan Life and Trans World were in collusion because plaintiff had warned Metropolitan Life directors to word the prospectus fairly. As a result of the collusion, the meeting was not fair to other bidders for Century 21 because Metropolitan Life already owned a substantial interest in Trans World Corporation.

In January 1986, a Dane County Circuit Court judge banned plaintiff's book, "The Amazing Mr. Mohs,"

In the court of appeals' decision to which plaintiff refers above, the court reversed a prior partial grant of summary judgment to then-plaintiff Century 21 on the issue of then-defendant Mohs's [sic] abandonment of the trade name under Wisconsin law. The court held further that resolution of this issue had been central to the determination of the subsequently tried unfair competition question, which had resulted in a decision unfavorable to Mohs. It ordered a new trial on all issues. The Wisconsin supreme court declined to review this decision on July 28, 1986. The exact outcome of the new trial is not clear from plaintiff's submissions. I infer from the complaint that it was not favorable to plaintiff, as the gist of his complaint before this court is that he is dissatisfied with the "lack of protection" he has received in state courts.

The court of appeals' decision to which plaintiff refers was issued after the October 1985 meeting.

because plaintiff described in chapter 21 the status of the Century 21 trade name litigation to the date of publication in December 1984. Plaintiff had to shelve $60,000 worth of books which were selling well when they were banned. Plaintiff has suffered numerous financial setbacks since he formed a partnership with the same name as the Century 21 Real Estate Corporation, and since that company instituted litigation against him. Plaintiff filed for bankruptcy. The lower state courts in Wisconsin have not protected plaintiff.

In 1977, Bayard Michael, counsel for Century 21 Real Estate Corporation, wrote a letter to the chief attorney for the franchise investment division of the office of the Commissioner of Securities in Washington D.C., in which he concluded that the services for which plaintiff had registered his trademark would not conflict with defendant Century 21's real estate brokerage business. This letter indicates that the litigation subsequently instigated against plaintiff was frivolous.

OPINION

Plaintiff's first contention is that Trans World Corporation violated federal securities law when it offered a prospectus that omitted the material fact that Century 21 Real Estate Corporation was involved in litigation with plaintiff over the use of its trade name, which prevented shareholders and prospective purchasers from making educated investment decisions.

Section 12(2) of the Securities Act of 1933, 15 U.S.C. §77(1) (2), provides for the imposition of civil liability in cases of an omission of material fact in a prospectus

related to the offer or sale of securities. Specifically, it provides that any person who:

> (2) offers or sells a security . . . by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission) . . .
>
> shall be liable to the person *purchasing* such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon . . . [emphasis added].

Defendants point out, correctly, that in order to maintain an action for fraud in the offering of a prospectus under this statute the plaintiff must actually have bought the security. *See Kellman v. ICS, Inc.*, 447 F.2d 1305, 1308 (6th Cir. 1971); *Roger v. Lehman Bros. Kuhn Loeb, Inc.*, 604 F.Supp. 222 (S.D. Ohio 1984) (only purchasers of securities have standing to sue for violations of §12 of the 1933 Act). The anti-fraud provisions of the Securities Act are intended to protect those who make decisions regarding the securities in question. *Cf. Norris v. Wirtz*, 719 F.2d 256, 259-60 (7th Cir. 1983), *cert. denied*, 466 U.S. 929 (1984), *overruled on other grounds, Short v. Belleville Shoe Manufacturing Co.*, 908 F.2d 1385, 1387 (7th Cir. 1990) (discussing purpose of Rule 10b-5 of the Securities and Exchange Act of 1934). They do not provide a remedy for a non-purchaser or seller like plaintiff who has not been injured by a false statement or omission.

Even if plaintiff had purchased Century 21 securities in reliance on the prospectus, his claim would be barred by the applicable statute of limitations. Section 13 of the Securities Act of 1933 provides that no action shall be brought to enforce any liability under section 12(2) unless brought within one year after the discovery of the omission, or after such discovery should have been made by the exercise of reasonable diligence, and under no circumstances more than three years after the sale. 15 U.S.C. §77(m); *Short*, 908 F.2d at 1392. Plaintiff's complaint establishes that he knew in 1985 that the prospectus omitted information about the pending litigation. The three-year limit for instigating litigation under this section expired in 1988. Plaintiff's claim based on a material omission of fact in the prospectus will be dismissed.

Plaintiff's second contention is that his First Amendment rights were abridged because he was prevented from speaking at the October 1985 meeting in New York. The First Amendment is a limitation on governmental action that abridges speech. It does not apply to limits imposed on speech by strictly private actors. *Air Wisconsin Pilots Protection Committee v. Sanderson*, 909 F.2d 213 (7th Cir. 1990), *cert. denied*, 111 S.Ct. 958 (1991) (plaintiff's claim of free speech violation by private entity Air Line Pilots Association derived not from First Amendment but from Landrum-Griffin Act). Plaintiff makes no allegation that there was any governmental participation at the meeting he attended or in imposing the restriction on his speech. Therefore, his allegations fail to state a claim that defendants violated his First Amendment right to speak.

As best I can tell, plaintiff's third contention is that defendant Trans World Corporation's conduct at the

October 1985 meeting constituted an "abuse of corporate power" warranting the revocation of its corporate charter under the laws of Delaware. Plaintiff points to Article IX, §1 of the constitution of the State of Delaware in support of this argument:

> No corporation shall hereafter be created, amended, renewed revived by special act, but only by or under general law, nor shall any existing corporate charter be amended, renewed or revived by special act, but only by or under general law . . . The general Assembly shall, by general law, provide for the revocation or forfeiture of the charters of all corporations for the abuse or non-user of their corporate powers . . .

While plaintiff's concern for the ethical conduct of corporate meetings is admirable, he does not allege any facts that would explain how any such abuse affected or injured his interests. Even if he had, this court would not be able to grant plaintiff any relief with regard to this claim. Article IX, §1 specifies that if revocation of a corporate charter is necessary, "[a]ny proceeding for such revocation or forfeiture, shall be taken by the Attorney General, as may be provided by law." Plaintiff's allegations concerning defendants' liability under Delaware law should be directed to the attorney general of that state.

Plaintiff's broad allegations of collusion between Trans World Corporation and Metropolitan Life are too vague to establish the basis for any claim that these defendants violated any particular right of plaintiff, or violated a particular law that resulted in harm to plaintiff.

In his complaint, plaintiff details numerous financial and personal indignities he asserts he has suffered since defendant Century 21 brought suit against him. As relief for these injuries, plaintiff requests, among other things, compensation for losses incurred through litigation and lost business opportunities; an injunction prohibiting Century 21 from infringing on his trade name; and reinstatement of his rights to the Century 21 name and to sell his book. Plaintiff also seeks novel forms of relief such as compensation to the state courts for their expenses, an oral apology from defendants in front of the state legislature, and a determination by this court that the lawsuits instigated against him were frivolous. Separately or together, plaintiff's allegations fail to state a claim against the moving defendants.

First, the link to the moving defendants contained in plaintiff's allegations is extremely tenuous. Plaintiff does not allege that any of the moving defendants were parties to the state court litigation. In his brief, he asserts only that Trans World Corporation owned Century 21 until the 1985 sale to Metropolitan Life, and that an attorney for Trans World was aware that Century 21 was involved in litigation with plaintiff. These facts do not even suggest that any of the moving defendants were connected to the state court litigation and therefore responsible for plaintiff's suffering.

Second, even if defendants had been involved in the prior litigation, scrutiny of plaintiff's allegations and requests for relief lead to the conclusion that plaintiff is asking this court to revisit and modify judgments of the

state courts with which plaintiff is dissatisfied.[4] This court cannot accommodate such a request.

The jurisdiction of federal district courts is limited to the determination of questions arising under the United States Constitution and under federal law. It has been held repeatedly that absent a constitutional infirmity in the judicial process through which a plaintiff attempts to vindicate his rights, federal district courts do not have authority to review the outcome of claims brought and decided in state court. This rule applies even when the plaintiff characterizes his claim as a new injury or one of constitutional dimensions. *See, e.g., Jentges v. Milwaukee County Circuit Court,* 733 F.2d 1238, 1244 (7th Cir. 1984) (federal court will not set aside conviction in guise of due process review simply because it might disagree with the state court's interpretation of state law) (citing *U.S. ex rel Burnett v. People of the State of Illinois,* 619 F.2d 668, 671 (7th Cir.), *cert. denied,* 449 U.S. 880 (1980)); *Hale v. Harney,* 786 F.2d 688, 691 (5th Cir. 1986) (litigant challenging trial court's ruling in divorce case cannot style suit as civil rights claim to obtain review in federal court if "in essence" court is being asked to review state decision) (citing *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983)); *Reynolds v. Georgia,* 640 F.2d 702 (11th

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[4] As noted earlier, although plaintiff does not provide any allegations about the final outcome of the state litigation, I can infer from the totality of his allegations that at some point after the court of appeals remanded the case, plaintiff received an unfavorable decision. I am unable to determine from the present record whether the issues were subsequently confined to state law, and whether plaintiff exercised his right to appeal an adverse judgment.

Cir. 1981) (despite contention that state court decision resulted in new injury, where plaintiff sought to have federal court set aside state court judgment as void, to obtain a declaration of her rights to the land in question, and enjoin defendants from interfering with her rights to the land, facts and complaint showed that plaintiff sought to review prior proceedings, which amounted to an exercise of appellate jurisdiction district court did not possess); *Town of Hopkins, South Carolina v. Cobb*, 466 F.Supp. 1212 (D.S.C. 1979) (plaintiff's §1983 suit was "veiled request for appellate review of the state court action"). *Cf. Ceramie v. Tucker*, 493 F.2d 586 (5th Cir.), *cert. denied*, 419 U.S. 868 (1974) (federal court's review of validity of decision of appellate courts of Louisiana in negligence case barred by doctrine of res judicata and absence of constitutional infirmity in Louisiana's system of appellate review).

Plaintiff does not allege any constitutional defect in the state court proceedings themselves. Although he has requested varied forms of relief, the gist of his complaint is that plaintiff wants this court to render a different judgment from the one he received in state court regarding the use and alleged infringement of the trade name "Century 21." This court cannot "modify, review or annul the orders and judgments" of the state courts. *Hopkins*, 466 F.Supp. at 1214. The proper manner of obtaining such review is through the appellate courts of this state and by a writ of certiorari to the Supreme Court of the United States. *Id.* at 1214 (citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)).

In addition to requesting review of the state court judgment, plaintiff may be attempting to make out a

claim that defendants violated his rights under federal law, because he has asserted that jurisdiction arises under 15 U.S.C. §1121 and 28 U.S.C. §1338, which give district courts original jurisdiction over actions under the federal trademark laws. However, if that is plaintiff's intention, his allegations still fail to state a claim against the moving defendants. Plaintiff cites to no applicable federal law; he does not detail the relationship between any of the defendants and Century 21; and he does not assert any facts relative to any trademark issues beyond asserting that he registered the Century 21 name first in Wisconsin. The facts in the complaint are too skimpy to state any sort of claim that the moving defendants violated a right of plaintiff under federal law to use the trade name Century 21.

Plaintiff should be aware that there are considerable obstacles at this juncture to his maintaining a successful federal court suit against *any* of the defendants. An action under federal or state law may be barred by the applicable statutes of limitations. Also, depending on the finality of the prior judgments, plaintiff may be collaterally estopped from relitigating issues that were already litigated and decided in the state court action involving defendant Century 21. *See, e.g., Whitley v. Seibel,* 676 F.2d 245, 248 & n. 1 (7th Cir.), *cert. denied,* 459 U.S. 942 (1982); *Speaker Sortation Systems v. United States Postal Service,* 568 F.2d 46 (7th Cir. 1978) (collateral estoppel may be invoked by new defendants against plaintiff as long as plaintiff has had full and fair opportunity to litigate the issue in state court).

ORDER

IT IS ORDERED that the motion to dismiss of defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partners is GRANTED. Plaintiff's complaint is DISMISSED with respect to these defendants.

Entered this 11th day of April, 1991.

BY THE COURT:

/s/ Barbara B. Crabb
BARBARA B. CRABB
District Judge

(3)

Supreme Court, U.S.
FILED
DEC 9 1993
OFFICE OF THE CLERK

CASE NO. 93-747

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

BRUCE BALDWIN MOHS,

Petitioner,

v.

CENTURY 21 REAL ESTATE CORPORATION, A wholly-owned subsidiary of METROPOLITAN LIFE INSURANCE COMPANY, TRANS WORLD CORPORATION, TW HOLDINGS, INC., and TW SERVICES, INC.

Respondents.

RESPONDENTS TRANS WORLD CORPORATION, TW HOLDINGS, INC., AND TW SERVICES, INC.'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOHN H. SCHMID, JR.
Counsel of Record
for Respondents
Trans World Corporation,
TW Holdings, Inc., and
TW Services, Inc.
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BEST AVAILABLE COPY

QUESTION PRESENTED

I. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT'S OPINION DISMISSING PETITIONER'S CLAIM UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND CLAIMS SEEKING REVIEW OF PRIOR WISCONSIN STATE COURT ACTIONS REGARDING THE USE OF THE "CENTURY 21" TRADENAME?

PARTIES

Petitioner Bruce Baldwin Mohs was the plaintiff in the proceedings in the District Court and the appellant in the proceedings in the Court of Appeals.

Respondents Trans World Corporation, TW Holdings, Inc. and TW Services, Inc. were defendants in the proceedings before the District Court and appellees in the proceedings before the Court of Appeals. None of these Respondents have parent or subsidiary companies required to be disclosed under Rule 29.1. Trans World Corporation is no longer an existing corporate entity and has not been an existing corporate entity throughout the life of these proceedings.

Respondents Century 21 Real Estate Corporation and Metropolitan Life Insurance Company were defendants in the proceedings before the District Court and appellees in the proceedings before the Court of Appeals.

TABLE OF CONTENTS/TABLE OF AUTHORITIES

Table of Contents and Table of Authorities are not required because of the brief length, pursuant to Supreme Court Rule 24.1(c).

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BRUCE BALDWIN MOHS,

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CENTURY 21 REAL ESTATE CORPORATION,
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OPINIONS BELOW

Petitioner's statement of the opinions below is not correct. The district court's opinions, dated April 11, 1991, and November 4, 1991, the district court's Judgment, the court of

appeals' Order dated April 30, 1993, and the court of appeals' Judgment are in the Appendix. These opinions are not reported in an official reporter.

JURISDICTION

The United States Supreme Court's jurisdiction of this case is based upon 28 U.S.C. §§ 1331 and 1254. Petitioner timely filed his Petition for a Writ of Certiorari as required by Supreme Court Rule 13.1.

CONSTITUTIONAL PROVISIONS/STATUTES INVOLVED

The present Respondents agree with the statement of the constitutional provisions involved set forth in the Petition for a Writ of Certiorari to the extent that it lists the First Amendment to the United States Constitution. The remaining constitutional and statutory provisions in the Petition for a Writ of Certiorari are not involved.

STATEMENT OF THE CASE

Petitioner commenced an action against Respondents alleging violations of his rights under the First Amendment to the United States Constitution, the United States Securities Laws, and Federal or State Trademark Laws. In April, 1991, the district court dismissed the plaintiff's complaint against Trans World Corporation, TW Holdings, Inc. and TW Services, Inc. pursuant to Federal Rule of Civil Procedure 12(b). See App. 1-13. Respondents Century 21 Real Estate Corporation and Metropolitan Life Insurance Company later filed a motion

for summary judgment pursuant to Federal Rule of Civil Procedure 56, which the district court granted. See App. 14-27. Judgment was entered in the district court on November 5, 1991. See App. 28. Appeal was taken to the United States Court of Appeals, which affirmed the district court. See App. 29-33.

The exact nature of the petitioner's claims is unclear. They apparently arise out of a conflict in the 1970s involving the use of the tradename "Century 21" in Wisconsin. In April of 1977, respondent Century 21 Real Estate Corporation commenced a Wisconsin state court action against the petitioner alleging trademark infringement and unfair competition. That action resulted in a jury verdict awarding respondent Century 21 Real Estate Corporation compensatory and punitive damages against the petitioner for his use of the Century 21 name.

In 1985, Trans World Corporation sold its interest in Century 21 Real Estate Corporation to respondent Metropolitan Life Insurance Company. Respondent Trans World Corporation has had no involvement with the petitioner in any respect, to the best of its knowledge. TW Holdings, Inc. and TW Services, Inc. have had no involvement with the petitioner to the best of their knowledge.

SUMMARY OF ARGUMENT

Petitioner apparently alleges claims under the First Amendment of the United States Constitution, the United States Securities Laws, and either Federal or State Trademark Laws. The Petition for a Writ of Certiorari does not apparently seek review of the dismissal of petitioner's claims under the United States Securities Laws. As a result, the present respondents address only the claims under the First Amendment of the

United States Constitution and the Federal or State Trademark Laws.

On the First Amendment claim, the district court concluded that Trans World Corporation had not engaged in governmental action prohibited under the First Amendment. On that basis, the First Amendment claims against the present respondents were dismissed and the court of appeals properly affirmed on that basis.

On the claims under Federal or State Trademark Laws, the district court noted that petitioner was seeking review of prior Wisconsin state court decisions. The district court also held that the petitioner did not state sufficient facts to allege a claim under any trademark laws. The court of appeals properly affirmed the dismissal of any potential trademark claim raised by the petitioner.

ARGUMENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

I. PETITIONER FAILS TO SHOW GOVERNMENTAL ACTION WHICH WOULD ENTITLE HIM TO MAINTAIN AN ACTION AGAINST THE PRESENT RESPONDENTS UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION.

Petitioner's First Amendment claim apparently arises out of his inability to speak at a Trans World Corporation shareholder meeting in New York, New York, which addressed the sale of Century 21 Real Estate Corporation to Metropolitan Life Insurance Company. Nothing in the complaint suggests that governmental participation was involved in petitioner's inability to speak at that meeting. The First Amendment is a limitation

on governmental action that abridges speech and does not apply to limits imposed on speech by strictly private actors. Air Wisconsin Pilots Protection Committee v. Sanderson, 909 F.2d 213 (7th Cir. 1990), cert. den'd, 111 S.Ct. 958 (1991). Because there were no allegations of governmental participation in any alleged abridgment of the petitioner's speech rights, the First Amendment claim was properly dismissed by the district court and the dismissal was properly affirmed by the court of appeals.

II. THE PETITIONER MAY NOT RELITIGATE STATE COURT DECISIONS REGARDING APPLICATION OF THE FEDERAL OR STATE TRADEMARK LAWS IN THE COURTS OF THE UNITED STATES.

The heart of petitioner's case is an attempt to have his lengthy litigation in the State of Wisconsin courts reviewed by the courts of the United States. This characterization of petitioner's claims is exemplified by the first sentence of the petitioner's statement of the opinions below: "The opinions below are in chronological order in this 17+ year long case." (Petition for a Writ of Certiorari at 2). The district court lacks subject matter jurisdiction to review the various decisions of the courts of the State of Wisconsin which prohibited petitioner from using the Century 21 name. See, e.g., District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983). There was no error in the decisions of the district court or the court of appeals.

CONCLUSION

The United States Supreme Court should deny the Petition for a Writ of Certiorari because petitioner's complaint was dismissed on settled law. No compelling issues in this case justify the Court's acceptance of this case for review. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JOHN H. SCHMID, JR.
Counsel of Record
for Respondents
Trans World Corporation,
TW Holdings, Inc., and
TW Services, Inc.
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(608) 257-5661

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

BRUCE BALDWIN MOHS,

Plaintiff,

v.

OPINION and ORDER
91-C-026-C

TRANS WORLD CORPORATION,
TW HOLDINGS, successor to
the above, SWT DIVISION OF
CONISTAN PARTNERS involved
in the transition phases from TRANS WORLD CORP. to
its present successor entities,
METROPOLITAN LIFE INSURANCE CO., and
CENTURY 21 REAL ESTATE CORP.,

Defendants.

This is an action for monetary and injunctive relief for violations of the securities laws, the First Amendment, and trademark laws, stemming from the use of the name Century 21 in Wisconsin and litigation instigated in Wisconsin state courts by defendant Century 21 Real Estate Corporation. Jurisdiction is asserted under 28 U.S.C. §§1332, 1338 and 15 U.S.C. §1121.

Defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partners have moved for dismissal of plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b) for failure to state a claim, for lack of personal jurisdiction, and for insufficient service of process. Because I agree with the moving defendants that plaintiff has failed to state a claim against them

for which relief may be granted, I do not reach the other grounds for dismissal.

For the sole purpose of deciding the motion to dismiss, I take as true the following factual allegations of the complaint.

Allegations of Fact

Plaintiff is an adult citizen and resident of Fitchburg, Wisconsin. Defendant Trans World Corporation is a publicly held corporation chartered in Delaware and headquartered in New York. Defendants TW Holdings and TW Services, successor corporations to Trans World Corporation, are headquartered in New Jersey and South Carolina respectively.[1] Defendants TW Holdings, TW Services, and Trans World Corporation are all registered as corporations in Delaware. Century 21 Real Estate Corporation is a wholly owned subsidiary of Metropolitan Life Insurance Corporation, and was at certain times relevant to this action a wholly owned subsidiary of Trans World Corporation.[2]

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[1] Plaintiff refers to "TW Services" as a successor corporation to Trans World Corporation. However, he has not listed this entity as a defendant in the caption to his complaint or alleged any particular liability on its part. Therefore, I will not construe plaintiff's complaint as attempting to state a claim against TW Services.

Plaintiff does not allege any facts regarding the location or incorporation of "SWT Division of Conistan Corporation," listed in the caption as a defendant.

[2] Plaintiff's complaint does not clarify the specific type of business in which each defendant is engaged, or explain the relationship among defendants Trans World Corporation, TW

On October 30, 1985 at a meeting at the World Trade Center in New York, defendants offered a prospectus to stockholders of record, former stockholders, and all present. The purpose of this meeting was to vote on the proposed sale of the Century 21 franchise system to Metropolitan Life Insurance Company for $251,200,000.00. At the time, plaintiff was a former stockholder of Trans World Corporation. Plaintiff did not contemplate buying any stock at this meeting.

In March 1973, plaintiff had filed a statement of adoption of the name "Century 21" with the Wisconsin Secretary of State. Plaintiff planned to use the name for a partnership that would develop a "one-stop home shopping" facility offering building supplies and financial services.

Plaintiff used the Century 21 name in Wisconsin over three and one-half years ahead of defendant Century 21 Real Estate corporation, which filed a statement of adoption with the Wisconsin Secretary of State in December 1976. Plaintiff adopted the name over one half year before Century 21's federal registration of its name. The Wisconsin-based Century 21 company never had a federal registration. Both firms started at about the same time, unknown to the other.

Trans World Corporation was not authorized to do business in Wisconsin as of September 1981, or in 1985 when it offered the prospectus on Century 21.

In the prospectus offered at the October meeting, Trans World Corporation omitted the material fact that Century 21 was engaged in litigation over the use of the "Century 21" name in Wisconsin.

Holdings, and SWT Division of Conistan Partners.

The franchise system of Century 21 and its trade name are the principal assets of Century 21 Real Estate Corporation. The value of the franchise system's name to Century 21 was 90% of the total value of the corporation. Therefore, the omission of the ongoing litigation concerning ownership of the Century 21 name violated instructions in the securities regulations specifying that a company must include in its registration statements and other reports any nonroutine ongoing litigation that affects over 10% of the value of the company.

The omission of information about this litigation misled the stockholders and others at the meeting into thinking that all was well with Trans World Corporation's wholly owned subsidiary, Century 21 Real Estate Corporation. The very existence of the company was in jeopardy, in light of the fact that the Wisconsin Court of Appeals had rendered a decision in favor of plaintiff on May 1, 1986.[3] Had Trans World Corporation

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[3] Plaintiff's exhibits include a January 1986 memorandum from a Dane County circuit court judge, in which the judge found that plaintiff's publication of his autobiography and other activities rendered plaintiff in contempt of an earlier injunction prohibiting him from interfering with defendant Century 21's service and trade mark.

In the court of appeals' decision to which plaintiff refers above, the court reversed a prior partial grant of summary judgment to then-plaintiff Century 21 on the issue of then-defendant Mohs's abandonment of the trade name under Wisconsin law. The court held further that resolution of this issue had been central to the determination of the subsequently tried unfair competition question, which had resulted in a decision unfavorable to Mohs. It ordered a new trial on all issues. The Wisconsin supreme court declined to review this

included information about the ongoing litigation in the prospectus, stockholders and other parties could have made an honest and educated decision on the sale of the franchise system. Trans World Corporation abused its corporate powers in the meeting held on October 30, 1985. Plaintiff was not allowed to tell the over 300 stockholders present at the meeting the truth about the omissions in the prospectus.

Prior to the October 30 meeting, the legal departments of Metropolitan Life and Trans World were in collusion because plaintiff had warned Metropolitan Life directors to word the prospectus fairly. As a result of the collusion, the meeting was not fair to other bidders for Century 21 because Metropolitan Life already owned a substantial interest in Trans World Corporation.

In January 1986, a Dane County Circuit Court judge banned plaintiff's book, "The Amazing Mr. Mohs," because plaintiff described in chapter 21 the status of the Century 21 trade name litigation to the date of publication in December 1984. Plaintiff had to shelve $60,000 worth of books which were selling well when they were banned. Plaintiff has suffered numerous financial setbacks since he formed a partnership with the same name as the Century 21 Real Estate Corporation, and since that company instituted litigation against him. Plaintiff

---

decision on July 28, 1986. The exact outcome of the new trial is not clear from plaintiff's submissions. I infer from the complaint that it was not favorable to plaintiff, as the gist of his complaint before this court is that he is dissatisfied with the "lack of protection" he has received in state courts.

The court of appeals' decision to which plaintiff refers was issued after the October 1985 meeting.

filed for bankruptcy. The lower state courts in Wisconsin have not protected plaintiff.

In 1977, Bayard Michael, counsel for Century 21 Real Estate Corporation, wrote a letter to the chief attorney for the franchise investment division of the Office of the Commissioner of Securities in Washington, D.C., in which he concluded that the services for which plaintiff had registered his trademark would not conflict with defendant Century 21's real estate brokerage business. This letter indicates that the litigation subsequently instigated against plaintiff was frivolous.

OPINION

Plaintiff's first contention is that Trans World Corporation violated federal securities law when it offered a prospectus that omitted the material fact that Century 21 Real Estate Corporation was involved in litigation with plaintiff over the use of its trade name, which prevented shareholders and prospective purchasers from making educated investment decisions.

Section 12(2) of the Securities Act of 1933, 15 U.S.C. §77(l)(2), provides for the imposition of civil liability in cases of an omission of material fact in a prospectus related to the offer or sale of securities. Specifically, it provides that any person who:

> (2) offers or sells a security . . . by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make

> the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission) . . .
>
> shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon . . . [emphasis added].

Defendants point out, correctly, that in order to maintain an action for fraud in the offering of a prospectus under this statute the plaintiff must actually have bought the security. See Kellman v. ICS, Inc., 447 F.2d 1305, 1308 (6th Cir. 1971); Roger v. Lehman Bros. Kuhn Loeb, Inc., 604 F.Supp. 222 (S.D. Ohio 1984) (only purchasers of securities have standing to sue for violations of §12 of the 1933 Act). The anti-fraud provisions of the Securities Act are intended to protect those who make decisions regarding the securities in question. Cf. Norris v. Wirtz, 719 F.2d 256, 259-60 (7th Cir. 1983), cert. denied, 466 U.S. 929 (1984), overruled on other grounds, Short v. Belleville Shoe Manufacturing Co., 908 F.2d 1385, 1387 (7th Cir. 1990) (discussing purpose of Rule 10b-5 of the Securities and Exchange Act of 1934). They do not provide a remedy for a non-purchaser or seller like plaintiff who has not been injured by a false statement or omission.

Even if plaintiff had purchased Century 21 securities in reliance on the prospectus, his claim would be barred by the applicable statute of limitations. Section 13 of the Securities Act of 1933 provides that no action shall be brought to enforce any liability under section 12(2) unless brought within one year after

the discovery of the omission, or after such discovery should have been made by the exercise of reasonable diligence, and under no circumstances more than three years after the sale. 15 U.S.C. §77(m); Short, 908 F.2d at 1392. Plaintiff's complaint establishes that he knew in 1985 that the prospectus omitted information about the pending litigation. The three-year limit for instigating litigation under this section expired in 1988. Plaintiff's claim based on a material omission of fact in the prospectus will be dismissed.

Plaintiff's second contention is that his First Amendment rights were abridged because he was prevented from speaking at the October 1985 meeting in New York. The First Amendment is a limitation on governmental action that abridges speech. It does not apply to limits imposed on speech by strictly private actors. Air Wisconsin Pilots Protection Committee v. Sanderson, 909 F.2d 213 (7th Cir. 1990), cert. denied, 111 S.Ct. 958 (1991) (plaintiff's claim of free speech violation by private entity Air Line Pilots Association derived not from First Amendment but from Landrum-Griffin Act). Plaintiff makes no allegation that there was any governmental participation at the meeting he attended or in imposing the restriction on his speech. Therefore, his allegations fail to state a claim that defendants violated his First Amendment right to speak.

As best I can tell, plaintiff's third contention is that defendant Trans World Corporation's conduct at the October 1985 meeting constituted an "abuse of corporate power" warranting the revocation of its corporate charter under the laws of Delaware. Plaintiff points to Article IX, §1 of the constitution of the State of Delaware in support of this argument:

> No corporation shall hereafter be created, amended, renewed revived by special act, but only by or under general law, nor shall any

> existing corporate charter be amended, renewed or revived by special act, but only by or under general law . . . The general Assembly shall, by general law, provide for the revocation or forfeiture of the charters of all corporations for the abuse or non-user of their corporate powers . . .

While plaintiff's concern for the ethical conduct of corporate meetings is admirable, he does not allege any facts that would explain how any such abuse affected or injured his interests. Even if he had, this court would not be able to grant plaintiff any relief with regard to this claim. Article IX, §1 specifies that if revocation of a corporate charter is necessary, "[a]ny proceeding for such revocation or forfeiture, shall be taken by the Attorney General, as may be provided by law." Plaintiff's allegations concerning defendants' liability under Delaware law should be directed to the attorney general of that state.

Plaintiff's broad allegations of collusion between Trans World Corporation and Metropolitan Life are too vague to establish the basis for any claim that these defendants violated any particular right of plaintiff, or violated a particular law that resulted in harm to plaintiff.

In his complaint, plaintiff details numerous financial and personal indignities he asserts he has suffered since defendant Century 21 brought suit against him. As relief for these injuries, plaintiff requests, among other things, compensation for losses incurred through litigation and lost business opportunities; an injunction prohibiting Century 21 from infringing on his trade name; and reinstatement of his rights to the Century 21 name and to sell his book. Plaintiff also seeks novel forms of relief such as compensation to the state courts for their expenses, an oral apology from defendants in front of the state legislature,

and a determination by this court that the lawsuits instigated against him were frivolous. Separately or together, plaintiff's allegations fail to state a claim against the moving defendants.

First, the link to the moving defendants contained in plaintiff's allegations is extremely tenuous. Plaintiff does not allege that any of the moving defendants were parties to the state court litigation. In his brief, he asserts only that Trans World Corporation owned Century 21 until the 1985 sale to Metropolitan Life, and that an attorney for Trans World was aware that Century 21 was involved in litigation with plaintiff. These facts do not even suggest that any of the moving defendants were connected to the state court litigation and therefore responsible for plaintiff's suffering.

Second, even if defendants had been involved in the prior litigation, scrutiny of plaintiff's allegations and requests for relief lead to the conclusion that plaintiff is asking this court to revisit and modify judgments of the state courts with which plaintiff is dissatisfied.[4] This court cannot accommodate such a request.

The jurisdiction of federal district courts is limited to the determination of questions arising under the United States Constitution and under federal law. It has been held repeatedly that absent a constitutional infirmity in the judicial process

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[4] As noted earlier, although plaintiff does not provide any allegations about the final outcome of the state litigation, I can infer from the totality of his allegations that at some point after the court of appeals remanded the case, plaintiff received an unfavorable decision. I am unable to determine from the present record whether the issues were subsequently confined to state law, and whether plaintiff exercised his right to appeal an adverse judgment.

through which a plaintiff attempts to vindicate his rights, federal district courts do not have authority to review the outcome of claims brought and decided in state court. This rule applies even when the plaintiff characterizes his claim as a new injury or one of constitutional dimensions. See, e.g., Jentges v. Milwaukee County Circuit Court, 733 F.2d 1238, 1244 (7th Cir. 1984) (federal court will not set aside conviction in guise of due process review simply because it might disagree with the state court's interpretation of state law) (citing U.S. ex rel Burnett v. People of the State of Illinois, 619 F.2d 668, 671 (7th Cir.), cert. denied, 449 U.S. 880 (1980)); Hale v. Harney, 786 F.2d 688, 691 (5th Cir. 1986) (litigant challenging trial court's ruling in divorce case cannot style suit as civil rights claim to obtain review in federal court if "in essence" court is being asked to review state decision) (citing District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983)); Reynolds v. Georgia, 640 F.2d 702 (11th Cir. 1981) (despite contention that state court decision resulted in new injury, where plaintiff sought to have federal court set aside state court judgment as void, to obtain a declaration of her rights to the land in question, and enjoin defendants from interfering with her rights to the land, facts and complaint showed that plaintiff sought to review prior proceeding, which amounted to an exercise of appellate jurisdiction district court did not possess); Town of Hopkins, South Carolina v. Cobb, 466 F.Supp. 1212 (D.S.C. 1979) (plaintiff's §1983 suit was "veiled request for appellate review of the state court action"). Cf. Ceramie v. Tucker, 493 F.2d 586 (5th Cir.), cert. denied, 419 U.S. 868 (1974) (federal court's review of validity of decision of appellate courts of Louisiana in negligence case barred by doctrine of res judicata and absence of constitutional infirmity in Louisiana's system of appellate review).

Plaintiff does not allege any constitutional defect in the state court proceedings themselves. Although he has requested

varied forms of relief, the gist of his complaint is that plaintiff wants this court to render a different judgment from the one he received in state court regarding the use and alleged infringement of the trade name "Century 21." This court cannot "modify, review or annul the orders and judgments" of the state courts. Hopkins, 466 F.Supp. at 1214. The proper manner of obtaining such review is through the appellate courts of this state and by a writ of certiorari to the Supreme Court of the United States. Id. at 1214 (citing Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)).

In addition to requesting review of the state court judgment, plaintiff may be attempting to make out a claim that defendants violated his rights under federal law, because he has asserted that jurisdiction arises under 15 U.S.C. §1121 and 28 U.S.C. §1338, which give district courts original jurisdiction over actions under the federal trademark laws. However, if that is plaintiff's intention, his allegations still fail to state a claim against the moving defendants. Plaintiff cites to no applicable federal law; he does not detail the relationship between any of the defendants and Century 21; and he does not assert any facts relative to any trademark issues beyond asserting that he registered the Century 21 name first in Wisconsin. The facts in the complaint are too skimpy to state any sort of claim that the moving defendants violated a right of plaintiff under federal law to use the trade name Century 21.

Plaintiff should be aware that there are considerable obstacles at this juncture to his maintaining a successful federal court suit against any of the defendants. An action under federal or state law may be barred by the applicable statutes of limitations. Also, depending on the finality of the prior judgments, plaintiff may be collaterally estopped from relitigating issues that were already litigated and decided in the state court action involving defendant Century 21. See, e.g., Whitley v.

Seibel, 676 F.2d 245, 248 & n.1 (7th Cir.), cert. denied, 459 U.S. 942 (1982); Speaker Sortation Systems v. United States Postal Service, 568 F.2d 46 (7th Cir. 1978) (collateral estoppel may be invoked by new defendants against plaintiff as long as plaintiff has had full and fair opportunity to litigate the issue in state court).

ORDER

IT IS ORDERED that the motion to dismiss of defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partners is GRANTED. Plaintiff's complaint is DISMISSED with respect to these defendants.

Entered this 11th day of April, 1991.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

BRUCE BALDWIN MOHS,

Plaintiff,

ORDER

v.

91-C-26-C

METROPOLITAN
LIFE INSURANCE CO., and CENTURY 21
REAL ESTATE CORP.,

Defendants.

This is an action for monetary and injunctive relief arising from defendant Century 21 Real Estate Corporation's (Century 21) use of the trade name "Century 21." In addition to state tort claims, plaintiff asserts violations of the First Amendment and securities and trademark laws. Jurisdiction is asserted under 28 U.S.C. §§1332, 1338, and 15 U.S.C. §1121.

Plaintiff has filed a motion to add Judge Robert R. Pekowksy and Michael J. Wyngaard as defendants and a document entitled "New Evidence for Court & Request for Injunctive Relief," both of which I will construe as motions to

amend plaintiff's complaint.[1] Defendants oppose both motions on the grounds that they are untimely and meritless.

Defendants Century 21 and Metropolitan Life have moved for summary judgment on the grounds that jurisdiction is lacking; that plaintiff fails to state a claim upon which relief can be granted; that the claims are precluded by res judicata and collateral estoppel; and that plaintiff lacks standing because he did not schedule any of his legal claims as assets when he filed for bankruptcy. Since defendants have addressed the merits of both the original complaint and proposed amendments, I will treat defendants' motion for summary judgment as a motion directed to both the original and amended complaint. I conclude that summary judgment for defendants is proper for reasons that are more fully set out below.

Plaintiff has submitted a document entitled "Acknowledgment and Admonishment," in which he acknowledges the receipt of the materials accompanying defendants' motion for summary judgment and requests that Century 21 be enjoined from distributing Century 21 advertisements on the premises of the Ivy Inn. Because plaintiff does not have standing to seek this injunction, I will deny his request.

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[1] Plaintiff has not submitted an amended complaint that entirely replaces his original complaint as required by this court; however, in the interest of efficiency I will consider the original complaint together with the allegations contained in the motions to amend the complaint.

FACTS[2]

Plaintiff resides in Wisconsin and is a business person and inventor. Defendant Century 21 is a real estate corporation with its principal office in California. It is a wholly owned subsidiary of Metropolitan Life. Defendant Metropolitan Life is a mutual insurance company with its principal office in New York.

In 1973 plaintiff recorded the trade name "Century 21" with the Secretary of State for Wisconsin for use in advertising merchandise for residential and commercial buildings. In 1977, defendant Century 21 sought permission to provide real estate brokerage services in Wisconsin, but plaintiff objected on the ground that he owned the rights to use the Century 21 trade name.

Counsel for Century 21 wrote the Wisconsin Securities Commissioner on March 24, 1977, stating that plaintiff had never operated a business under the name Century 21 and that plaintiff's use of the name for building supplies did not conflict with Century 21's real estate brokerage business. At or about the time the letter was written, plaintiff placed an advertisement

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[2] Plaintiff has not submitted Proposed Findings of Fact and Conclusions of Law, and he has not challenged any of defendants' proposed findings of fact, despite the detailed instructions that were sent to him with the order dated June 19, 1991. As a result, I have found as undisputed facts defendants' proposed findings of fact (which are amply supported in the record). Plaintiff submitted an untimely response in opposition to defendants' motion for summary judgment which I will consider despite its untimeliness since plaintiff is proceeding pro se.

in a local paper which stated "Exclusive in Wisconsin - Century 21 - Your Full Line Real Estate Service - Commercial - Industrial - Residential - Shopping Malls and Arcades - a Livesey-Mohs Real Estate Service."

On April 15, 1977, Century 21 filed a complaint in Dane County Circuit Court alleging trademark infringement and unfair competition against plaintiff and the Livesey-Mohs partnership. Plaintiff counterclaimed, seeking to enjoin Century 21 from using the trade name "Century 21" and also seeking monetary damages and declaratory relief based on Century 21's alleged trademark infringement.

In a partial final judgment on September 23, 1982, Judge Pekowsky canceled plaintiff's and the Livesey-Mohs Partnership's name registration of the trade name Century 21, enjoined them from using the name, and dismissed their counterclaims. Plaintiff attempted unsuccessfully to appeal the partial summary judgment, and then filed an amended answer, affirmative defenses and counterclaims, alleging again that he had superior rights to the trade name Century 21. On plaintiff's motion, the court reconsidered the partial summary judgment it had entered and again granted partial summary judgment in favor of Century 21. A jury returned a verdict against plaintiff on the remaining issues, and Judge Pekowsky entered a final judgment on May 18, 1984, enjoining plaintiff from using the Century 21 name or injuring Century 21's business reputation, ordering him to produce all the materials bearing the name Century 21, and entering a damage award against him of $124,501.

In 1985, Transworld Corporation, the owner of Century 21, sold Century 21 to Metropolitan Life. In August 1985, Century 21 became aware that plaintiff was distributing a book in which he described his perception of the litigation involving the Century 21 trade name, and also that plaintiff had

written letters to members of the Board of Directors of Metropolitan Life before its purchase of Century 21, claiming that he owned the trade name Century 21. Based on these developments, Judge Pekowksy entered a memorandum decision on January 9, 1986 finding plaintiff in contempt of the 1984 court order, but no contempt order was entered and plaintiff did not appeal the decision.

On May 1, 1986, the Wisconsin Court of Appeals reversed the trial court's partial summary judgment, reversed the jury verdict and remanded the case for a new trial on all the issues. In the second trial, the jury returned a special verdict in favor of Century 21 and awarded compensatory and punitive damages. The relevant jury findings were that plaintiff had not established a protectible right to use the Century 21 trade name; did not abandon the trade name; used the Century 21 trade name in a manner likely to cause confusion and with the intent to deceive the public; intentionally interfered with Century 21's expected business relationship; and did not act with malice in publishing statements that cast doubt on the validity of Century 21's trademark. On February 9, 1988, the Dane County Circuit Court entered an amended judgment on the verdict, awarding declaratory and injunctive relief, $4,000.00 in damages and $15,000.00 in punitive damages against plaintiff. Plaintiff attempted unsuccessfully to enlarge his time to appeal, and the court entered an order declaring the amended judgment final and nonappealable.

On August 5, 1988, plaintiff filed schedules of his financial affairs in the Bankruptcy Court for the Western District of Wisconsin. During the bankruptcy proceedings, plaintiff attempted unsuccessfully to invalidate a mortgage held by the law firm Wyngaard & Wilson in security for the payment of plaintiff's legal fees incurred during his litigation with Century 21. In those proceedings plaintiff argued that the

mortgage should be invalidated because Wyngaard & Wilson failed to disclose that it was representing Century 21 affiliates at the same time it represented plaintiff in his case against Century 21. The bankruptcy court rejected plaintiff's theory,[3] approved plaintiff's amended disclosure statements on February 10, 1989, and entered an order of discharge on October 5, 1989. The schedules and disclosure statements do not list any of the claims that plaintiff asserts in this action. Plaintiff also filed a grievance with the Board of Professional Responsibility of the Supreme Court of Wisconsin concerning Wilson & Wyngaard's alleged conflict of interest.[4]

At some point following the bankruptcy court's determination, plaintiff initiated an action in state court against Paul Soglin, a former lawyer at Wyngaard & Wilson, seeking to invalidate Wyngaard & Wilson's mortgage on the ground that the firm provided "disloyal representation" because it failed to disclose a conflict of interest.[5] Plaintiff also filed a grievance

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[3] Neither party has provided a transcript or written order from the bankruptcy proceedings, but I take judicial notice of the fact that an order denying plaintiff's objection to Wyngaard & Wilson's claim was entered on September 25, 1989 in bankruptcy case number MM7-88-01717, in the Bankruptcy Court for the Western District of Wisconsin.

[4] The date and outcome of the Board of Professional Responsibility's investigation have not been provided. However, I infer from plaintiff's continued attempts to relitigate this issue that the outcome was unfavorable to him.

[5] Plaintiff attached a copy of this complaint to his Preliminary Pretrial Statement, but it is unclear what date the complaint was filed, although the date that plaintiff signed the

with the Board of Attorneys Professional Responsibility of the Wisconsin Supreme Court regarding the alleged disloyal representation.[6]

On January 7, 1991, plaintiff filed the complaint in this action against Transworld Corporation, TW holdings (allegedly a successor to Transworld Corporation), SWT Division of Conistan Partners, Century 21 and Metropolitan Life. In his complaint plaintiff alleged that TransWorld Corporation violated federal securities law when it offered a prospectus that omitted the material fact that Century 21 was involved in litigation with plaintiff over the use of its trade name, and this omission prevented shareholders and prospective purchasers from making an educated investment decision regarding the sale of Century 21 to Metropolitan Life. Plaintiff alleged also that his First Amendment rights were violated when he was not permitted to speak at the shareholder's meeting; that the state court proceedings initiated by Century 21 were frivolous, infected with unfairness and the cause of his bankruptcy; that Century 21's continued infringement of the Century 21 trademark disparaged plaintiff's business; that Transworld and Metropolitan Life abused their corporate powers; and that the law firm Wyngaard & Wilson failed to provide loyal representation because it failed to disclose that it represented Century 21 affiliates while simultaneously representing plaintiff in his litigation with Century 21.

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complaint is January 30, 1991. No further information has been provided regarding the current status of this case.

[6] I am unable to determine the outcome of this investigation from the record.

In an order dated April 11, 1991, I dismissed plaintiff's complaint against defendants Transworld Corporation, TW Holdings and SWT Division of Conistan Partners for plaintiff's failure to state a claim for which relief may be granted. In another order dated June 19, 1991, I established August 1, 1991 as the deadline for serving and filing amendments to the pleadings. That order required a party to attempt to obtain permission from opposing parties before filing a proposed amendment, and required any proposed amendment to be accompanied by a motion for leave to amend along with a statement that the party has been unable to obtain the opposing party's consent.

On or about July 15, 1991, defendants informed plaintiff that they would not consent to plaintiff's proposed addition of Michael J. Wyngaard and Judge Robert Pekowsky as defendants. On August 7, 1991, plaintiff filed a motion to add Judge Pekowsky and Michael Ash, an lawyer at Wyngaard & Wilson, as defendants, and on August 9, 1991, plaintiff filed a motion titled "New Evidence for the Court and Request for Injunctive Relief by Plaintiff."

OPINION

Defendants oppose plaintiff's motions to amend his complaint on the ground that they are untimely. However, the technical rules of civil procedure are relaxed for pro se plaintiffs, and it does not appear that defendants will be prejudiced by my consideration of plaintiff's motions, despite their untimeliness and lack of conformity to civil procedure requirements. Because defendants also oppose the amendments on the same grounds as they oppose the original complaint, I will consider defendant's motion for summary judgment as directed to all of plaintiff's claims, amended and original.

Federal Securities Law

Plaintiff contends that Transworld Corporation colluded with Metropolitan Life to violate federal securities law by offering a prospectus that omitted the material fact that Century 21 was involved in litigation with plaintiff over the use of its trade name. In the April 11, 1991 order I dismissed this claim against Transworld, TW Holdings and SWT Division because plaintiff did not buy the security and therefore did not have standing to maintain an action under §12(2) of the Securities Act of 1933, 15 U.S.C. §77(l)(2). Furthermore, even if plaintiff had bought a security, his claim would be barred by the one-year statute of limitations, 15 U.S.C. §77(m), and plaintiff's broad allegations of collusion between Transworld and Metropolitan Life were "too vague to establish the basis for any claim that these defendants violated any particular right of plaintiff, or violated a particular law that resulted in harm to plaintiff."

For these same reasons I will dismiss this action against the remaining defendants. Plaintiff has not refined his allegations, and even if he had alleged collusion with sufficient specificity, plaintiff's claim would fail because he lacks standing and the statute of limitations bars his claim.

First Amendment Rights

Plaintiff contends that his First Amendment rights were abridged when he was prevented from speaking at the shareholder meeting in New York concerning the sale of Century 21 to Metropolitan Life. As I explained in the April 11, 1991 order, the United States Constitution limits governmental action, not private action. See Spencer v. Lee, 864 F.2d 1376, 1378 (7th Cir. 1989), cert. denied, 110 S.Ct. 1317 (1990). Not only does plaintiff fail to allege any governmental participation,

he also fails to allege that Century 21 or Metropolitan Life were involved in preventing plaintiff from speaking at the meeting. Therefore, this claim will be dismissed for plaintiff's failure to state a claim under Fed. R. Civ. P. 12(b)(6).

Abuse of Corporate Power

Plaintiff contends that Transworld Corporation's conduct at the shareholder meeting constituted an abuse of power warranting the revocation of its corporate charter under the laws of Delaware. In the April 11 order I dismissed this claim because plaintiff failed to allege any facts that would explain how any such abuse affected or injured his interests. Furthermore, this court has no power to grant plaintiff relief because Delaware law specifies that any proceedings to revoke a corporate charter must be taken by the Delaware General Attorney.

Plaintiff makes no allegations regarding this claim against Century 21, and only vague allegations that Metropolitan Life was involved in Transworld's alleged abuse of corporate power. As discussed above, these allegations are too vague to state a claim, and even if they were sufficiently specific plaintiff has no federal claim because federal court is not the proper forum for revoking a corporate charter granted by the State of Delaware. Therefore this claim is dismissed for plaintiff's failure to state a claim under Fed. R. Civ. P. 12(b)(6).

Relief from State Judgments

Distilled to their essential nature, plaintiff's claims all arise from his disagreement with the state court rulings prohibiting him from using the Century 21 trade name. He attacks the rulings on the grounds that the lawsuits instigated against him were frivolous; the rulings adverse to him were incorrectly decided; and that Michael Ash, a lawyer at the law

firm of Wyngaard & Wilson who represented plaintiff during the second jury trial also represented A-K Realty, a Century 21 franchisee, which precluded Ash from vigorously and objectively representing plaintiff. Plaintiff contends that the protracted and frivolous litigation initiated by Century 21 has disparaged plaintiff's business and driven him to bankruptcy.

As I stated in the order dated April 11, 1991, federal district courts do not have authority to review the outcome of claims brought and decided in state court, even when the plaintiff characterizes his claim as a new injury or one of constitutional dimensions. See, e.g., Jentges v. Milwaukee County Circuit Court, 733 F.2d 1238, 1244 (7th Cir. 1984)(federal court will not set aside conviction in guise of due process review simply because it might disagree with the state court's interpretation of state law)(citing United States ex rel. Burnett v. People of the State of Illinois, 619 F.2d 668, 671 (7th Cir.), cert. denied, 449 U.S. 880 (1980); Hale v. Harney, 786 F.2d 688, 691 (5th Cir. 1986)(litigant challenging trial court's ruling in divorce case cannot style suit as civil rights claim to obtain review in federal court if "in essence" court is being asked to review state decision); see also the Order and Opinion entered herein on April 11, 1991, at page 12.

Plaintiff does not allege a constitutional infirmity in the state court proceedings; rather, his primary complaint is that he disagrees with the state's decision. This court cannot "modify, review or annul the orders and judgments" of state courts. Town of Hopkins v. Cobb, 466 F. Supp. 1212, 1214 (D.S.C. 1979). The proper avenue for obtaining such review is through the appellate courts of the state. Id. at 1214 (citing Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)). Plaintiff's claims against Century 21 and Metropolitan Life are essentially only an attempt to relitigate the issue of who owns the Century 21 trademark, an issue already fully explored in state court.

Furthermore, plaintiff's claim that Century 21's litigation was frivolous is meritless because Century 21 prevailed in protracted state court proceedings. Even if Century 21's state claim was frivolous, the proper avenue for redress was in the state court proceedings regarding the Century 21 trade name. Wis. Stat. §814.025 (providing for the award of costs for frivolous actions at any time during the proceedings). Similarly, any claims of business disparagement arising from Century 21's use of the trade name should have been raised in the state proceedings litigating the issue of who may use the trade name in Wisconsin.

Even if this court could review the state court decision, plaintiff would not be entitled to a new trial on the ground that his attorney refused to disclose a conflict of interest, because each party is "deemed bound by the acts of his lawyer-agent. . . ." Links v. Wabash R.R., 370 U.S. 626, 633-34 (1962); Village of Big Bend v. Anderson, 103 Wis.2d 403, 406, 308 N.W.2d 887, 889 (Wis. Ct. App. 1981). Plaintiff's recourse is a suit for malpractice, such as the one he is pursuing in state court.

In addition to a new trial, plaintiff seeks to set aside Wilson & Wyngaard's mortgage on plaintiff's property because of the alleged conflict of interest. This claim was rejected by the bankruptcy court, and if plaintiff desired to appeal that decision, he must have filed a notice of appeal within 10 days of the entry of the final order. Bankruptcy Rule 8002 (a); In re Souza, 795 F.2d 855 (9th Cir. 1986)(10-day filing period strictly construed). Nothing in the record suggests that plaintiff has filed a notice of appeal. Plaintiff cannot now seek to appeal the order over two years after its entry.

Injunction

In his "Acknowledgment & Admonishment" plaintiff alleges that Century 21 has been "loitering" on and in the premises of the Ivy Inn to distribute Century 21 advertising. Plaintiff requests that Century 21 be enjoined from this activity and in return he offers to cease advertising the "Century 21 (of WI) in the office area of either Mr. Zaslav or Mr. Decker."[7] Because pro se plaintiffs are to be treated liberally, I will construe plaintiff's request as a motion for preliminary injunction.

Plaintiff does not allege that the distribution of advertisements has violated any legal right of his, a necessary prerequisite to seeking an injunction. Palmer v. City of Chicago, 755 F.2d 560, 573 (7th Cir. 1985)(plaintiff must allege sufficient harm to have standing to seek injunction). It has already been determined in lengthy state proceedings that plaintiff has no rights to the Century 21 trade name, so plaintiff cannot claim the injury of trademark infringement. Another possible injury might be that of trespass, but any trespass would injure the Ivy Inn, not plaintiff. If any person or entity has standing to seek an injunction, it would be the Ivy Inn, not plaintiff. Because no right of plaintiff is being violated, plaintiff's motion for an injunction will be dismissed for lack of standing. Even if plaintiff did have standing it is unlikely that an injunction would be granted because plaintiff has failed to show a likelihood of success on the merits of his claim, an impending irreparable injury resulting from the distribution, or the absence of an adequate remedy at law. Cox v. City of Chicago, 868 F.2d 217, 219 (7th Cir. 1989).

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[7] Mr. Decker is the attorney of record for defendants, but Mr. Zaslav's relationship to this dispute is unclear.

Because all of plaintiff's claims will be dismissed for failure to state a claim, lack of jurisdiction, or lack of standing, and because the claims asserted against Judge Pekowsky and Michael Wyngaard have no merit, I will deny plaintiff's motion to amend the complaint to add these two defendants. This disposition of the case makes it unnecessary to address defendants' argument that plaintiff lacks standing to assert the claims set forth in his complaint because he failed to list them as assets in his bankruptcy schedule of assets.

ORDER

IT IS ORDERED THAT plaintiff's motion to amend his complaint is DENIED, defendants' motion for summary judgment is GRANTED, and plaintiff's motion for an injunction is DENIED. The Clerk of Court is directed to enter final judgment for all defendants.

Entered this 4th day of November, 1991.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

JUDGMENT IN A CIVIL CASE

[Caption Omitted]

IT IS ORDERED AND ADJUDGED

That the motion to dismiss of defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partnerners is GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that the plaintiff's motion to amend his complaint and plaintiff's motion for an injunction is DENIED.

IT IS FURTHER ORDERED AND ADJUDGED that defendants Century 21 and Meptropolitan Life's motion for summary judgment is GRANTED, and judgment is entered in favor of all defendants.

/s/ Joseph W. Skupniewitz November 5, 1991

Clerk

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604
Submitted April 14, 1993*

Decided April 30, 1993.

Before

Hon. WALTER J. CUMMINGS, Circuit Judge.

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

BRUCE B. MOHS,
Plaintiff-Appellant,

No. 92-1957 v.

TRANS WORLD CORPORATION, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Wisconsin

No. 91 C 26

Barbara B. Crabb,
Chief Judge.

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." Fed. R. App. P. 34(a); Circuit Rule 34(f). Mohs has filed such a statement. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

ORDER

Bruce B. Mohs, entrepreneur and author of "The Amazing Mr. Mohs," brought this action pro se alleging violations of the First Amendment and of the federal securities and trademark laws stemming from prior state court litigation between Century 21 Real Estate Corporation and himself over the use in Wisconsin of the trade name, "Century 21." Jurisdiction was premised upon the existence of federal questions. 28 U.S.C. § 1331. The district court entered judgment for all the defendants, and this appeal followed.

Mohs' appellate brief, apart from its interesting recitation of the events in controversy here, is rather woefully inadequate. It fails to advance any legal argument regarding the propriety of the district court's decision, and it contains a dearth of citation to relevant authority. Fed. R. App. P. 28(a)(5); McCottrell v. EEOC, 726 F.2d 350, 351 (7th Cir. 1984); United States v. Brown, 899 F.2d 677, 679 n.1 (7th Cir. 1990); Pelfresne v. Village of Williams Bay, 917 F.2d 1017, 1023 (7th Cir. 1990). Our job is not to do Mohs' research for him. Pelfresne, 917 F.2d at 1023.

Notwithstanding Mohs' noncompliance with Rule 28(a)(5), we agree with the district court that Mohs failed to state a First Amendment claim, Air Wisconsin Pilots Protection Committee v. Sanderson, 909 F.2d 213, 218 (7th Cir. 1990), cert. denied, 111 S.Ct. 958 (1991); that Mohs had no standing under either § 12(2) of the Securities Act of 1933, Smolen v. Deloitte, Haskins & Sells, 921 F.2d 959, 965 (9th Cir. 1990); cf. Davidson v. Belcor, Inc., 933 F.2d 603, 605-06 (7th Cir. 1991), or Delaware law, Cleaver v. Roberts, 57 Del. 538, 544, 203 A.2d 63, 66 (1964); and that the district court lacked subject matter jurisdiction to review the Wisconsin state court rulings prohibiting Mohs from using the "Century 21" name, District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486

(1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923); Leaf v. Supreme Court, 979 F.2d 589, 596 (7th Cir. 1992). We therefore **AFFIRM** the decision of the district court for the reasons set forth in the attached Order.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT - WITHOUT ORAL ARGUMENT

Date: April 30, 1993

BEFORE:

Honorable WALTER J. CUMMINGS, CIRCUIT JUDGE

Honorable RICHARD D. CUDAHY, Circuit Judge

Honorable DANIEL A. MANION, Circuit Judge

No. 92-1957

BRUCE B. MOHS,
Plaintiff - Appellant,

v.

TRANS WORLD CORPORATION,
TW HOLDINGS, SWT DIVISION
OF CONISTAN PARTNER, et al.,
Defendants - Appellees.

Appeal from the United States District Court for the Western District of Wisconsin

No. 91 C 26, Barbara B. Crabb, Chief Judge

This cause came before the court for decision on the record from the above mentioned District Court.

On consideration whereof, **IT IS ORDERED AND ADJUDGED** by this court that the judgment of the

District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered this date.

(1060-040593)